82-282

Office - Supreme Court, U.
FILED
AUG 6 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-

IN THE

Supreme Court of the United States

October Term, 1982

THOMAS C. McCAIN and WILLIAM SPENCER, individually and on behalf of all those similarly situated,

Appellants,

vs.

CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W. T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS, and RICHARD A. BEALS, individually and as members of the Board of Election Commissioners of Edgefield County, S. C.; and J. M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

JURISDICTIONAL STATEMENT

ARMAND DERFNER
Suite 400
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004

HERBERT E. BUHL, III
533-A Harden St.
Columbia, SC 29205

LAUGHLIN McDONALD*
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie St., N.W.
Atlanta, GA 30303-2188
404-523-2721

**Counsel of Record*

QUESTIONS PRESENTED

1. Whether the district court erred in ruling that at-large elections adopted in 1966 for the Edgefield, South Carolina County Council had been pre-cleared pursuant to §5 of the Voting Rights Act of 1965, where the Attorney General informed State officials that the 1966 change had never been submitted or pre-cleared?

2. Whether pre-clearance under §5 of a 1971 submission expressly limited to an increase in size of the Council from three to five members, resulted in pre-clearance sub silentio of at-large elections adopted in 1966, where the submission contained no information to enable the Attorney General to determine whether the 1966 use of at-large voting was a change from any prior practice, and in view of the Attorney General's subsequent "please submit" letter?

3. Whether a transfer of powers from State to Edgefield County elected officials pursuant to implementation of statewide home rule is a voting change subject to pre-clearance under §5?

TABLE OF CONTENTS

	Page
Table of Authorities.....	iv
Opinion Below.....	1
Jurisdiction of the Court.....	1
Statutory Provision Involved.....	2, 25a
Statement of the Case.....	2
The Questions Presented Are Substantial.....	12
I. The Opinion of the Three-Judge Court That the Adoption of At-Large Voting for the Edgefield County Council in 1966 Had Been Pre-Cleared Directly Conflicts with §5 of the Voting Rights Act and Controlling Decisions of This Court. ..	12
A. The 1966 Act Was Never Pre-Cleared.	12
B. The District Court Improperly Usurped the Pre-Clearance Function.	13
C. The 1966 Act Was Never Properly Submitted.	15
II. The Decision Below Conflicts with a Decision of the District Court for the District of Columbia that a Transfer of Powers Under Home Rule is a Covered Voting Change under §5.	20
Conclusion.....	23

TABLE OF CONTENTS (CONT'D)

Page

Appendix..... 1a

A. Opinion of the Three-Judge Court. 1a

B. Notice of Appeal.....23a

C. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973...25a

D. Letter from Department of Justice objecting to 1976 resolution and ordinance of Edgefield, South Carolina County Council. 29a

E. Letter from Department of Justice requesting submission of S.C. Act No. 1104 (1966)....40a

F. Letter from Department of Justice pre-clearing S.C. Act No. 521 (1971).....43a

TABLE OF AUTHORITIES

Cases: Page(s)

Allen v. State Board of Elections, 393 U.S. 544 (1969)..... 1-2, 14, 22

Beer v. United States, 425 U.S. 130 (1976)..... 17

Berry v. Doles, 438 U.S. 190 (1978). 14, 22

Blanding v. DuBose, __U.S.___, 102 S.Ct. 715 (1982)..... 13

Cases (cont'd): Page(s)

City of Mobile v. Bolden, 446 U.S. 55 (1980)..... 5

City of Rome v. United States, 446 U.S. 156 (1980)..... 15

Connor v. Waller, 421 U.S. 657 (1975)..... 14

Dougherty County v. White, 439 U.S. 32 (1978)..... 14, 22

Georgia v. United States, 411 U.S. 526 (1973)..... 21

Horry County v. United States, 449 F.Supp. 990 (D.D.C. 1978)..... 20, 21

Lytle v. Commissioners of Election of Union County, 509 F.2d 1049 (4th Cir. 1974)..... 3

McCain v. Lybrand, Civ. No. 74-281 (D.S.C. 1980)..... 4, 5

Morris v. Gressette, 432 U.S. 491 (1977)..... 19

Perkins v. Matthews, 400 U.S. 379 (1971)..... 14, 22

United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 110 (1978)..... 12, 15, 16

Constitutional Provisions:

Fourteenth Amendment..... 3

Fifteenth Amendment..... 3

Statutory Provisions: Page(s)

Federal:

28 U.S.C. §1253..... 1

28 U.S.C. §2284..... 1

Voting Rights Act of 1965, §2, 42 U.S.C. §1973..... 3

Voting Rights Act of 1965, §5, 42 U.S.C. §1973c..... passim

State:

Act No. 521, S.C. Laws 1971..... 6, 7

Act No. 1104, S.C. Laws 1966..... 6

S.C. Code §4-9-10, et seq. 7

Regulations:

28 C.F.R. Part 51, §51.25(b)..... 18

OPINION BELOW

The opinion of the three-judge court of the United States District Court for the District of South Carolina sought to be reviewed is unreported, and is appended hereto at 1a.

JURISDICTION OF THE COURT

This is an appeal from a decision of a three-judge district court convened pursuant to §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, and 28 U.S.C. §2284.

The decree sought to be reviewed was entered on May 10, 1982. The notice of appeal was filed in the United States District Court for the District of South Carolina on June 7, 1982. 23a.

Jurisdiction of this appeal is conferred on this Court by 42 U.S.C. §1973c and 28 U.S.C. §1253. Allen v. State Board

of Elections, 393 U.S. 544 (1969).

STATUTORY PROVISION INVOLVED

42 U.S.C. §1973c. 25a.

STATEMENT OF THE CASE

Appellants are black registered voters of Edgefield County, South Carolina, who seek to enforce §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, and to require pre-clearance of at-large elections for the Edgefield County Council. The Appellees are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners, and the President of the Executive Committee of the Edgefield County Democratic Party.

Factual Background

The original complaint was filed on February 26, 1974 and charged that: (1) at-large elections for the County Council diluted minority voting strength in violation of, inter alia, the Fourteenth and Fifteenth Amendments and §2 of the Voting Rights Act of 1965, 42 U.S.C. §1973; and (2) residential districts for election of Council members were malapportioned on the basis of population.

On May 16, 1974, the district court granted summary judgment for appellants on their one person-one vote claim. The district court was reversed sub nom. Lytle v. Commissioners of Election of Union County, 509 F.2d 1049 (4th Cir. 1974), on the grounds that the districts did not have such a disparity in population as to render them unconstitutional.

On April 17, 1980, after trial on the merits, the district court ruled for appellants on their dilution claim, concluding that "the rights of the blacks to due process and equal protection of the laws in connection with their voting rights have been and continue to be unconstitutionally infringed." McCain v. Lybrand, Civ. No. 74-281 (D.S.C.), p. 20.[1] The district court, however, upon motion of the appellees

---

1. Edgefield County has been cited for other constitutional violations, e.g., maintaining racially exclusive jury lists, ibid., p. 13; operating a segregated chain gang, ibid.; maintaining the racially discriminatory character of public schools following desegregation in 1970. Ibid., p. 15.

vacated its opinion following the decision in City of Mobile v. Bolden, 446 U.S. 55 (1980) for the reason that appellants had not proved racial purpose in the adoption or maintenance of the challenged at-large elections. McCain v. Lybrand, supra, August 11, 1980. Those constitutional and §2 issues are still pending in the district court and are not before this Court.

The §5 Issues

Appellants amended their complaint pursuant to order of the district court of November 24, 1980 to raise the §5 issues involved in this appeal.

Prior to November 1, 1964, the government of Edgefield County consisted of two commissioners appointed by the governor upon the recommendation of the members of the General Assembly from the county, and the elected county supervisor

of roads. The commission had only limited powers, basic governance being exercised by the local legislative delegation.

On June 1, 1966, Act No. 1104 was enacted by the state legislature creating the Edgefield County Council. The Act provided for a council of three members elected at-large, by plurality vote, for terms of two years, from specified residential districts. The Act also gave certain powers of home rule to the council.

Although Act No. 1104 of 1966 was a voting qualification or prerequisite to voting, or standard, practice or procedure different from that in force or effect on November 1, 1964, it was never submitted or pre-cleared as required by §5. Stipulations of the Parties, 5.

Act No. 1104 was amended on June 25, 1971 by Act No. 521. The only change made by Act No. 521 was to increase the membership of the council and the number of

residential districts from three to five.[1] Act No. 521 was submitted to the Attorney General pursuant to §5 and no objection to the change involving an increase in the size of the council was interposed.[2]

On June 21, 1976, pursuant to statewide home rule legislation requiring counties to select one of five designated forms of government, S.C. Code §4-9-10 et seq., the Edgefield County Council adopted by ordinance the council-administrator form of government, whereby the council consists of five members elected from residential districts by the voters of the county at-large.

---

1. Act No. 521 was entitled: "An Act To Amend Act 1104 Of 1966, As Amended, Relating To A System Of County Government For Edgefield County, So As To Increase The Number Of Districts And The Number Of County Council Members." Stipulations of the Parties. Exhibit C.

2. The clearance letter dated November 24, 1971 provided simply that: "The Attorney General does not interpose any objections to the change in question." 43a.

The 1976 ordinance was eventually submitted for pre-clearance and the Attorney General, on February 8, 1979, objected "to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County." 37a.[1]

---

1. The Attorney General noted that while at-large voting was "ostensibly. . . the same system of election used by the county in electing its present Council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act." 30a. The differences were the powers under home rule to create special taxing districts, to tax different areas at different rates depending on services rendered, to enact ordinances to enforce powers granted by home rule and to fill vacancies on the council by election. Ibid. These changes in the powers of the council "as the organ for the governance of the electorate," formed the basis for §5 review of the county's implementation of home rule. 31a. The Attorney General then concluded that the council had not sustained its burden of proving that at-large elections were not adopted with a discriminatory purpose or that their effect would not be discriminatory.

Despite the objection of the Attorney General, appellees made preparations to hold the 1980 elections for the County Council at-large.[1] Then, on April 17, 1980 and August 11, 1980, the district court entered and vacated respectively its order finding at-large elections in Edgefield County to be unconstitutional.

Four months later, on December 9, 1980, the Assistant Attorney General informed state officials the 1966 Act adopting at-large voting had never been pre-cleared. The State was advised "it is necessary that this Act either be brought before the District Court for the District of Columbia or submitted to the Attorney General." 40a.

---

1. After the objection by the Attorney General, the County Council initially voted "to pursue the implementation of single member districts." A Citizens Advisory Committee was formed which recommended a specific plan, but the recommendation was ultimately disregarded. Stipulations of the Parties, 20, 26, Exs. H, I.

The appellants moved to amend their complaint to enforce the Attorney General's §5 objection to implementation of the 1976 home rule ordinance, and to require pre-clearance of the 1966 Act adopting at-large voting.[1] Leave to amend was granted.

---

1. The Attorney General's objection to the implementation of home rule had, of course, not been entered at the time the complaint was filed in 1974. In addition, the failure to submit the 1966 act was not disclosed to appellants until the "please submit" letter from the Attorney General on December 9, 1980. For example, in his letter of September 29, 1978 submitting Edgefield's implementation of home rule, the county attorney erroneously represented that the 1966 act had been submitted and pre-cleared by the Department of Justice: "I am enclosing herewith an act of 1966 establishing the Edgefield County Council and amendments thereto in their chronological order, all of which have been approved by the Justice Department." A subsequent records search by the Attorney General disclosed the failure to submit the 1966 Act. Stipulations of the Parties, Exhibit N, 40a.

Appellants moved before the three-judge court for summary judgment on their §5 causes of action. On May 10, 1982, the court denied relief on the grounds that appellees were "not required to submit the 1966 Act to the Attorney General of the United States for pre-clearance, since its provisions, including at-large voting, have been approved by the said Attorney General in pre-clearing the 1971 Act," and the 1976 implementation of home rule "resulted in no change in the form or method of electing Edgefield County Council and are not subject to §5 pre-clearance." 20a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

THE OPINION OF THE THREE-JUDGE COURT THAT THE ADOPTION OF AT-LARGE VOTING FOR THE EDGEFIELD COUNTY COUNCIL IN 1966 HAD BEEN PRE-CLEARED DIRECTLY CONFLICTS WITH §5 OF THE VOTING RIGHTS ACT AND CONTROLLING DECISIONS OF THIS COURT.

A. The 1966 Act Was Never Pre-Cleared.

The district court held that the Attorney General "approved" at-large voting for the Edgefield County Council adopted in 1966 when he pre-cleared an increase in size of the Council in 1971. The conclusion is flatly contradicted by the Attorney General himself who informed state officials on December 9, 1980 that the 1966 Act had never been submitted or pre-cleared.[1] The "mischaracterization" by the district court

---

1. This Court has emphasized that deference is due the determinations of the Attorney General under §5. United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 110, 131 (1978).

of the Attorney General's actions in pre-clearing the 1971 Act requires reversal. See Blanding v. DuBose, __U.S.___, 102 S.Ct. 715, 719 (1982).

Here, just as in Blanding, the South Carolina district court overrode a §5 determination of the Attorney General. In light of the State's admission that the 1966 act was never submitted to the Department of Justice for pre-clearance, Stip. 5, and the letter from the Attorney General advising that pre-clearance was required, 40a, there is not even a colorable basis for the lower court's decision.

B. The District Court Improperly Usurped the Pre-Clearance Function.

The decision of the district court had the effect of pre-clearing the 1966 Act and amounts to a complete usurpation of the §5 function reserved for the Attorney General and the District Court for the District of Columbia, in violation of the

Voting Rights Act of 1965, 42 U.S.C. §1973c, and relevant decisions of this Court.

This Court has consistently held that the inquiry of a local three-judge court is limited to coverage and does not concern substantive application of §5. Allen v. State Board of Elections, 393 U.S. 544, 570 (1969); Perkins v. Matthews, 400 U.S. 379, 386 (1971); Connor v. Waller, 421 U.S. 657 (1975); Berry v. Doles, 438 U.S. 190 (1978); Dougherty County v. White, 439 U.S. 32 (1978). The district court simply had no jurisdiction to determine that the 1966 Act had met the substantive test of §5--i.e., "its provisions, including at-large voting, have been approved by the said Attorney General." 20a. It is for the Attorney General, or the District Court for the District of Columbia, not the local district court, to determine whether a voting change has in fact met the substantive requirements of §5.

C. The 1966 Act Was Never Properly Submitted.

Under the decisions of this Court and regulations promulgated by the Attorney General implementing §5, it is clear that there never was any legally sufficient submission of the 1966 adoption of at-large voting for the Edgefield County Council.

This Court has held that covered jurisdictions are required "in some unambiguous and recordable manner [to] submit any legislation or regulation in question directly to the Attorney General with a request for his consideration," City of Rome v. United States, 446 U.S. 156, 169 n.6 (1980), quoting from Allen v. State Board of Elections, supra, 393 U.S. at 571, and that the Attorney General be afforded "an adequate opportunity" to determine the purpose or effect of the proposed change. Ibid; United States v. Board of Commissioners of Sheffield,

Alabama, 435 U.S. 110, 136 (1978)("the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him.")[1] Applying the proper test set

---

1. In United States v. Board of Commissioners of Sheffield, Alabama, supra, the Attorney General had been informed that if a proposed referendum was pre-cleared and if the proposal to change the form of government was approved in such referendum, that the city would revert to the mayor-aldermanic form that existed in 1912. 435 U.S. at 114 n.5. This Court held that since the submission letter did not request pre-clearance of the change in form of government, but merely volunteered such information, pre-clearance of the holding of the referendum did not clear under §5 the method of electing city officials under the new government. 435 U.S. at 135-38.

out by this Court, Edgefield County's 1971 submission of a change expressly limited to an increase in size of the Council cannot be viewed as an "unambiguous. . .request for. . .consideration" of the 1966 change from appointive to elective government.[1]

---

1. The district court attached great importance to the fact that in the process of pre-clearing the 1971 increase in size of the County Council, the Attorney General requested and was provided a copy of the 1966 Act as well as information about elections conducted in 1968 and 1970. 11a. The Attorney General obviously knew that at-large voting was in use in 1966 in Edgefield County, but there was absolutely nothing in the submission or supplemental material to indicate what method of selection was in use prior to 1966. The district court opinion thus allows jurisdictions to play a shell game with §5 by concealing discriminatory practices within ameliorative, unobjectionable voting changes, Beer v. United States, 425 U.S. 130 (1976), a result wholly at variance with the purposes of the Voting Rights Act.

The Attorney General's regulations also require that if a change in voting is not readily apparent on the face of the documents provided, submissions are to contain a "clear statement of the change explaining the difference between the submitted change and the prior law." 28 C.F.R. Part 51, §51.25(b). There can be no contention that any such "clear statement" involving the change in 1966 from appointed to elected government was contained in the 1971 submission or in any of the materials subsequently submitted to the Department of Justice. Indeed, there was no statement or identification of such change at all.

The County's submission in 1971 informed the Attorney General only that it wished to increase the size of the Council from three to five members, but it did not inform the Attorney General in any manner that it had also made a change in 1966 from appointed to elected at-large government

and that pre-clearance of that change was being sought. In order for such a change to be presented to the Department of Justice it would have been necessary to submit the statute and procedures in force and effect prior to 1966.[1] It is absolutely clear from the record and facts in this case that no such information was submitted.[2]

The opinion of the district court is inconsistent with applicable decisions of this Court and Department of Justice regulations governing §5 and should be set aside.

---

1. "According to the terms of §5, a covered jurisdiction is in compliance. . .once it has (i) filed a complete submission with the Attorney General, and (ii) received no objection from that office within 60 days." Morris v. Gressette, 432 U.S. 491, 502 (1977).

2. The district court also concluded that the 1971 Act substituted "completely new provisions for the form and method of election of Edgefield County Council." 13a. To the contrary, the 1971 Act made no change whatsoever in the method of at-large

(Footnote continued on next page)

II.

THE DECISION BELOW CONFLICTS WITH A DECISION OF THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THAT A TRANSFER OF POWERS UNDER HOME RULE IS A COVERED VOTING CHANGE UNDER §5.

The district court held that the reallocation or transfer of powers from state elected officials to the Edgefield County Council under statewide home rule in 1976 was not a voting change subject to pre-clearance. 20a. The decision directly conflicts with Horry County v. United States, 449 F.Supp. 990, 995 (D.D.C. 1978).

(Footnote continued from preceding page)
voting. The court's finding is in any event wholly inconsistent with its subsequent conclusion that the 1976 implementation of home rule was "no [voting] change" required to be pre-cleared. 20a. Since the 1976 ordinance was a "completely new provision" for local elections, given the court's reasoning it should be subject to pre-clearance without regard to whether it continued the prior use of at-large voting.

The District of Columbia court in Horry County gave two reasons for finding §5 applicable to home rule implementation in Horry County, South Carolina: (1) requiring an appointed governing body to be elected, was a voting change; and (2) the reallocation of governmental powers occasioned by home rule triggered §5 review. Both kinds of changes were found to "affect the voting rights of the citizens of Horry County, and must be subject to Section 5 requirements." 449 F.Supp. at 995.[1]

This Court has consistently held that

---

1. The Attorney General, of course, in this case has similarly concluded that the transfer of powers under home rule in Edgefield County furnish an independent basis for objection to the use of at-large voting. 29a. See also Georgia v. United States, 411 U.S. 526, 533-34 (1973)(the fact that a submitting authority treated a practice as required to be submitted is an indication that it is in fact a covered change).

all changes in voting in covered jurisdictions, even those which affect the electorate in only a minor way, are subject to pre-clearance. Perkins v. Matthews, supra; Allen v. State Board of Elections, supra; Dougherty County v. White, supra. The transfer of powers occasioned by implementation of home rule in Edgefield County in 1976 should be deemed covered by §5. Thus, even if the 1966 Act were pre-cleared, the 1976 implementation of at-large voting would still be objectionable under §5.

The Court should note probable jurisdiction to resolve this conflict between the district courts.[1]

---

1. The resolution of this issue may prove unnecessary for a decision in this case. If Appellants are correct that the 1966 adoption of at-large voting was never pre-cleared, it necessarily follows that the 1976 home rule implementation of at-large elections was properly subject to §5 review and objection. Berry v. Doles, supra, 438 U.S. at 195 n.1 (concurring opinion of J. Brennan)("the duty to comply with §5 is a continuing one").

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal, and grant summary judgment for Appellants or set the case for oral argument.

Respectfully submitted,

LAUGHLIN McDONALD*
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie St., NW
Atlanta, GA 30303-2188
[404] 523-2721

ARMAND DERFNER
Suite 400
1301 Pennsylvania Ave., NW
Washington, DC 20004

HERBERT E. BUHL, III
533-A Harden Street
Columbia, SC 29205

ATTORNEYS FOR APPELLANTS

*Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Thomas C. McCain, Ernest Williams and William Spencer, Individually and on behalf of all those similarly situated, Plaintiffs, vs Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W.T. Timmerman, Individually and as members of the County Council of Edgefield County; Norman Dorn, John S. Edwards and Richard A. Beals, Individually and as members of the Board of Election Commissioners of Edgefield County, South Carolina; and J.M. Pendarvis, Individually and as President of the Executive Committee of the Democratic Party of Edgefield County, Defendants.	FILED MAY 10, 1982 Civil Action No. 74-281 O R D E R

This three-judge district court was empaneled to hear plaintiffs' claims that changes in statutes and ordinances governing election of the Edgefield County Council have been put into effect in violation of § 5 of the Voting Rights Act of 1965, '2 U.S.C. § 1973c. Plaintiffs are black voters of Edgefield County, South Carolina. The defendants are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the executive committee of the Edgefield County Democratic Party.

The initial complaint filed on February 26, 1974 contended (1) that the method of electing the Edgefield County Council diluted black voting strength in violation of the First, Thirteenth, Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1971, 1972 and 1973, and (2) that council residency districts were malappor-

tioned on the basis of population.

The initial complaint sought relief in the form of a declaratory judgment that the Edgefield County plan violated the plaintiffs' constitutional rights, an injunction prohibiting the defendants from holding further elections under the plan, and an order requiring Edgefield County Council to reapportion itself in a constitutional manner. On May 16, 1974 the Honorable Sol Blatt, Jr. granted a motion for summary judgment by the plaintiffs, holding that because of the unequal apportionment of certain of the districts within the county, the one-man, one-vote principle had been violated. On appeal this matter was heard and decided with Lytle v. Commissioners of Election of Union County, 509 F.2d 1049 (4th Cir. 1974). The circuit court found that the Edgefield County plan did not have such a variance or disparity in population among districts as to require

the deletion on constitutional grounds of the residency requirements imposed by the statute. On June 19, 1975, the district court granted the defendants' motion for summary judgment on the one-man, one-vote claim.

The remaining issue, whether the method and apportionment of election of Edgefield County Council dilutes the voting strength of black citizens of Edgefield County in violation of their constitutional rights, was tried on November 24 and 25, 1975. A ruling on this issue was delayed for several years at the request of all attorneys, while they attempted to settle the case and agree on enabling legislation. These efforts did not come to fruition. On April 17, 1980 the district court entered an order finding that the at-large method of electing the Edgefield County Council infringed upon "the rights of the blacks to due process and equal protection in

connection with their voting rights."

Four days later defendants moved the district court to vacate its April 17 order on grounds that the court had not expressly found intent to discriminate as required by the Supreme Court's then recent decision in City of Mobile v. Bolden, 446 U.S. 55 (1980). This motion was granted on August 11, 1980. The court also reopened the evidentiary portion of the case to allow the parties to submit any additional evidence on the issue of intent to discriminate. By second supplemental complaint (filed pursuant to order dated November 24, 1980), plaintiffs added their claims for relief under § 5 of the Voting Rights Act of 1965.

Prior to November 1, 1964 Edgefield County was governed by a board of county commissioners, consisting of an elected county supervisor and two commissioners appointed by the Governor upon the recom-

mendation of the Edgefield County legislative delegation. On June 1, 1966 the South Carolina General Assembly passed Act No. 1104 creating the Edgefield County Council. The council consisted of three members, one from each of three designated residency districts. Voting on each member was not by district, but by county at-large.

Edgefield County is subject to the provisions of the Voting Rights Act of 1965. There is no dispute that Act No. 1104 of 1966 was subject to the preclearance provisions of § 5 of the Act and that county officials should have, but did not, submit the Act to the Justice Department or to the District Court for the District of Columbia for preclearance.

Act No. 1104 of 1966 was amended on June 25, 1971 by Act No. 521. Act No. 521 increased both the number of residency districts in Edgefield County and the number of Edgefield County Council members

from three to five. On September 24, 1971, Act No. 521 of 1971 was submitted to the Justice Department for preclearance. The Attorney General did not object to the provisions of the Act.

In 1975 the South Carolina General Assembly passed Act No. 283, the Home Rule Act, which is now codified at S. C. Code §§ 4-9-10, et seq (1976). The Act permitted each county to hold a referendum to choose one of five alternative forms of county government. If a county did not conduct such a referendum by July 1, 1976, the Act provided that the county would as of that date, "have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect immediately prior to that date." In the case of Edgefield County, the General Assembly determined the closest of the five stipulated forms to be the council-

administrator form of government. The Home Rule Act was precleared by the Attorney General by letter dated June 27, 1975.

No referendum was held in Edgefield County. On June 21, 1976 the Edgefield County Council adopted by resolution and ordinance the council-administrator form of government. On September 28, 1978 the resolution and ordinance passed on June 21 were submitted to the Justice Department for preclearance. After asking for additional information, the Attorney General interposed an objection to the resolution and ordinance on February 8, 1979.

Shortly thereafter, the Edgefield County Council met to consider the Attorney General's objection to the resolution and ordinance. A committee was appointed to study implementation of single-member districts. In May of 1979 the committee issued a report proposing adoption of single-member election districts for the

Edgefield County Council. One year later the district court entered its April 17 order striking down the method of election in Edgefield County. On April 21, 1980, the Edgefield County Council met and passed a resolution directing the county attorney to meet with the district court regarding implementation of a single-member district election plan. Four days later defendants moved the district court to vacate its April 17 order on grounds of the Supreme Court's decision in City of Mobile v. Bolden, supra.

In their second supplemental complaint, plaintiffs contend that defendants should be enjoined from use of at-large voting because 1966 Act No. 1104 has never been precleared. It is plaintiffs' position that this court should view the failure of the Attorney General to interpose objection to 1971 Act as merely relating to the change in the number of

council members and district from three to five. Plaintiffs' arguments would require this court to find that the Attorney General did not consider the effect of at-large, as opposed to district, voting when he elected not to object to 1971 Act No. 521. Analysis of both the facts before the Attorney General and his requests for additional information do not bear out plaintiffs' argument.

Although 1971 Act No. 521 is entitled, "An Act To Amend Act 1104 of 1966. . . So As To Increase The Number of Districts And The Number of County Council Members," every indication is that the Attorney General did not limit his consideration of the Act to the change in number of districts and number of council members. In the late summer of 1971, David L. Norman of the Justice Department contacted state officials and requested additional information in connection with

the evaluation of Act No. 521. Norman asked that the State provide "maps showing the boundaries of the County Council districts under the existing statute as well as under [Act No. 521]." He also requested "population and registration statistics, by race, for the present election districts and the proposed election districts as well as a copy of the election statute now in force." (emphasis added). Mr. Norman additionally stated, "It will also be necessary for us to know the names, and race, of all candidates for County Council in the last two primary and general elections, and the results of these elections by district." All of the requested information was submitted to the Justice Department except the population of the election districts by race, which information was not available.

The information requested and received by Norman indicates that he had the 1966 Act before him and was aware that the form and method of election of the Edgefield County Council then in effect had been adopted in 1966. Norman's letter requesting information about the former districts and results of elections by race indicates that Justice Department's review of Act No. 521 encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966. Since the Attorney General approved the at-large with residence district form of election in 1971, any defect in the 1966 Act No. 1104 is moot. It would serve no useful purpose at this late date to set aside the 1966 Act. The Attorney General in 1971 approved all pertinent provisions of the 1966 Act when he examined and approved

the 1971 amendment.

Analysis of the language of the two acts - 1966 Act No. 1104 and 1971 Act No. 521 - compels rejection of plaintiffs' contention that failure to submit Act No. 1104 dooms the present method of electing the Edgefield County Council. Although Act No. 521 changed only the number of residency districts and members of the council, the Act provides for the"striking out" of all provisions of the 1966 Act dealing with the form and method of electing county council. The Act then substitutes completely new provisions for the form and method of election of Edgefield County Council, including provisions for the at-large with residency requirement form of election. The Attorney General's approval of these new provisions also renders moot any objection to the superceded 1966 provisions.

Plaintiffs' second argument is that at-large voting for Edgefield County Council should be enjoined since the Attorney General objected to implementation of the June 21, 1976, council resolution and ordinance adopting the council-administrator form of government for Edgefield County. Defendants contend that implementation of the Home Rule Act is not a "change" subject to §5 preclearance. Plaintiffs assert that defendants do not have standing to question the Attorney General's decision to object to the resolution and ordinance.

Turning first to the standing issue, plaintiffs' reliance on Morris v. Gressette, 432 U.S. 491 (1977), is misplaced. Section 5 affords jurisdictions covered by the Voting Rights Act the alternative of obtaining the Attorney General's approval of changes in the form or method of elections in covered

jurisdictions. This alternative avoids the necessity of initiating an action (to obtain approval of a change in voting laws) in the District Court for the District of Columbia. In Morris v. Gressette, supra, the Supreme Court reasoned that permitting district court review of the Attorney General's decision not to object to a proposed change would deny covered jurisdictions the expeditious alternative of seeking preclearance from the Attorney General. The court ruled that protection of this less burdensome method of review justified prohibiting review of the Attorney General's decision not to object. Id. at 504-505.

In the instant case, defendants question the Attorney General's decision to object to June 21, 1976 resolution and ordinance implementing the Home Rule Act in Edgefield County. Review of the

Attorney General's decision under these circumstances does not implicate the County's interest in the less burdensome method of preclearance, and Morris v. Gressette, supra, therefore, is inapplicable. Whether the alleged changes in the form and method of electing the Edgefield County Council are subject to §5 of the Voting Rights Act is squarely within this court's scope of review. Georgia v. United States, 411 U.S. 526, 527-35 (1973), and Woods v. Hamilton, 473 F. Supp. 641 (D.S.C. 1979). Accordingly, we address defendants' contentions that Edgefield County's implementation of the Home Rule Act was not a "change" in voting laws subject to §5 of the Voting Rights Act.

Plaintiffs argue that implementation of the Home Rule Act in Edgefield County was a change in election procedure subject to §5 of the Act. This issue was

addressed in Woods v. Hamilton, supra at 644-47, where the court held that the ministerial act of passing ordinances implementing the Home Rule Act (which Act had previously been precleared) in Charleston County, were not "changes" covered by §5 of the Voting Rights Act. Id., at 647. In reaching that decision, the court expressly rejected the analysis undertaken in Horry County v. United States, 449 F. Supp. 990 (D.D.C.1978), upon which plaintiffs now rely. We hold that the Attorney General's June 27, 1975 letter to state officials precleared both the holding of referenda and the transfer of powers under the Home Rule Act. We also hold that the June 21, 1976 resolution and ordinance resulted in no change in the form or method of electing Edgefield County Council, and that the June 21 resolution and ordinance are not a change subject to §5 preclearance. Woods

v. Hamilton, supra, at 644-45.

Plaintiffs' final argument is that at-large elections for Edgefield County Council should be enjoined since county officials sought to implement a single-member district apportionment for the Edgefield County Council. This contention is without merit since defendants never adopted a single-member district plan.

Immediately following the district court's April 17, 1980 order striking down the at-large method of election, county council took the following action:

> A motion was made by Councilman Herlong and seconded by Councilman Williams to have the county attorney schedule a meeting with Judge Chapman and discuss with him the plan of action that has been recommended to the Edgefield County Council by the Citizens' Advisory Committee to establish single member districts and request the judge to allow us to put the plan into effect for the 1982 election, utilizing

> the 1980 census data in order that we will not have to redistrict twice. Also to hold a special election for the council members will be expensive. Motion carried.

While it is clear that the Edgefield County Council discussed and studied single-member district elections, the council never formally adopted such a method of election. The details of a plan were never agreed upon or adopted and the tentative actions undertaken here do not require preclearance by the Attorney General. This action could not be submitted to or approved by the Attorney General because it did not actually establish single member districts or define the boundaries of such districts.

The supplemental complaint asks this court to declare the rights of the parties and enjoin the holding of elections for Edgefield County Council at-large. To reiterate, we hold:

1. That defendants are not required to submit the 1966 Act to the Attorney General of the United States for preclearance, since its provisions, including at-large voting, have been approved by the said Attorney General in preclearing the 1971 Act.

2. That the Attorney General's letter of June 27, 1975 to South Carolina officials approved for the purpose of the Voting Rights Act the holding of referenda and the transfer of powers under the Home Rule Act, and this included Edgefield County Council.

3. The June 21, 1976 Edgefield County Council resolution and ordinance adopting the council-administrator form of government for Edgefield County resulted in no change in the form or method of electing Edgefield County Council and are not subject to §5 preclearance.

4. The motion adopted by Edgefield County Council on April 21, 1980 was never implemented and did not result in a change in the method of election and is not subject to approval or preclearance for this reason.

5. That the actions of defendants in preparing to hold elections for County Council at-large are not in violation of §5 of the Voting Rights Act.

6. That the plaintiffs' request for an injunction to prevent the holding of elections for Edgefield County Council under the present at-large system is denied.

AND IT IS SO ORDERED.

s/Clement F. Haynsworth, Jr.
Clement F. Haynsworth, Jr.
United States Circuit Judge

s/Donald S. Russell
Donald S. Russell
United States Circuit Judge

s/Robert F. Chapman
Robert F. Chapman
United States Circuit Judge

May 10, 1982.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ET AL., Plaintiffs, v. CHARLES E. LYBRAND, ET AL., Defendants.	FILED June 7, 1982 CIVIL ACTION NO. 74-281

Notice of Appeal

Plaintiffs Thomas C. McCain and William Spencer, hereby appeal to the Supreme Court of the United States from the order of the District Court denying declaratory and injunctive relief entered in this case on May 10, 1982. This appeal is taken pursuant to 28 U.S.C. §1253 and 42 U.S.C. §1973c.

s/Laughlin McDonald
LAUGHLIN McDONALD
NEIL BRADLEY
CHRISTOPHER COATES
Suite 355

52 Fairlie Street, N.W.
Atlanta, Georgia 30303-2188

s/Armand Derfner
ARMAND DERFNER
1301 Pennsylvania Avenue,
N.W.
Washington, D.C. 20005

s/Herbert E. Buhl, III
HERBERT E. BUHL, III
533 Harden Street
Columbia, South Carolina
29205

42 U.S.C. §1973c:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1968, or

whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section (4)(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, that such qualification, prerequisite,

procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate officials of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates

that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional informations comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

FEB 8 1979

Mr. H.O. Carter
County Administrator
Edgefield County Council
Post Office Box 663
Edgefield, South Carolina 29824

Dear Mr. Carter:

This is in reference to the implementation of the South Carolina Home Rule Act by Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 10, 1978.

We have given careful consideration to information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Our analysis reveals that blacks constitute 52 percent of the population of Edgefield County and that under the proposed ordinance implementing Home Rule, council members will be elected at large from residency districts. While this is,

ostensibly, the same system of election used by the county in electing its present council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act.

According to our information, under "Home Rule", the county council may create special taxing districts, tax different areas at different rates depending on services rendered, enact ordinances to enforce powers granted by the Home Rule Act and fill vacancies on the council by election rather than appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County. According to our information these powers, and others, were not previously exercised by the county council. Thus, as we perceive it, even though the formal structure of the council remains the same, the changes resulting from compliance with the Home Rule Act

alter the council as the organ for the governance of the electorate and, accordingly, form the basis for evaluating the system under which the more responsible form of government ordained by the Home Rule Act is to be elected. That form of government requires at-large elections with residency districts.

Court decisions, to which we feel obligated to give great weight, have established that the use of at-large elections in situations where there is a cognizable racial minority and a history of voting along racial lines has the potential for impermissibly diluting minority voting strength. See White v. Regester, 412 U.S. 755 (1973); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 836 (1976); Bolden v. City of Mobile, 571 F.2d 238 (5th Cir. 1978), prob. jur. noted, 47 U.S.L.W. 3221 (U.S. Oct. 2, 1978)(No. 77-1844). Our analysis of your

submission reveals that although blacks represent a substantial proportion of the population of Edgefield County, no blacks have ever been elected to the Edgefield County Council. Our analysis further reveals that bloc voting along racial lines exists in Edgefield County. With racial bloc voting present and under the at-large elections blacks have not elected candidates of their choice to the county council. Under a system of fairly drawn single member districts, blacks would be afforded access to the political process in Edgefield County.

Furthermore, a significant element of our analysis during the review of a change such as this is in the nature of home rule itself. As originally conceived and presented to the public, "home rule" was a new system that transferred a significant measure of political power from each county's legislative delegation to the

county councils in a way that called for the full and active participation of the electorate in selecting the type of government and the method of election through referenda called by the county council, the legislature (at the suggestion of the county's legislative delegation) or upon the petition of 10% of the registered electorate. It was on such understanding of public participation and involvement that the Attorney General declined to object to the statewide home rule authorization act when it was submitted in 1975. Moreover, we understood that the electorate in each county would choose among the systems set forth in the Home Rule Act - i.e., single-member districts or at-large elections and one of the designated alternate forms of government.

Home rule, as we understood it from contemporaneous representations, was to be essentially a new and expanded

system of county governance which would provide a readily available opportunity for expression of the preferences of the electorate from among the specifically enumerated types of government and methods of election. However, as interpreted to date by the South Carolina judiciary, "home rule" appears to be something less than what initially was represented to us. First, in Dodds v. Stuckey, the court determined that instead of being limited to the specified methods of election enumerated in the Act, the method of election then existing in Charleston County (at-large with residency districts) would, in the absence of a referendum, be continued. Second, in Infinger v. Edwards the court held (again with respect to Charleston County) that a referendum could not be held after July 1976 despite the filing of a timely and sufficient petition prior to that date. Finally, in Hamilton v. Tillman the court held that no subsequent referendum on method of election could be held since the law allowed

referenda only with respect to form of government, not method of election.

While we are mindful of the fact that the question of the sufficiency of the petition filed in Edgefield's case is still pending before the state court, the only existing judicial interpretations we have available to us at the present time are those noted above. Had these interpretations of the Home Rule Act been available to use at the time of our initial consideration they would have had a significant impact on our evaluation of the statewide consequences of home rule. Even though we recognize that that appraisal is now beyond recall, the state court's interpretations are now available and must be taken into consideration in our analysis of the effects of "home rule" in Edgefield County.

Our review discloses that there has been substantial support for a referendum in Edgefield County, particularly

among the black voters. According to our information black citizens of Edgefield County filed petition in May 1976 requesting such a referendum, a request that was denied by the county and which is now pending before the State Supreme Court. It is our further information that black citizens in Edgefield strongly favor the adoption of a single member district system of elections. However, because the county has rejected the effort of the black community to petition for a referendum and since the county also has chosen not to call for such a referendum on its own motion, the apparent sentiment for a change to single-member districts has not been brought to a vote. Accordingly, the promise of public participation in the selection of the form of government and method of election under home rule has simply not been realized in Edgefield County.

Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Georgia v. United States, 411 U.S. 526, 538 (1973), City of Richmond v. United States, 422 U.S. 358, 380-81 (1975)(Brennan, J., dissenting), 28 C.F.R. 51.19.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County. However, should the county undertake to adopt an electoral system that more accurately reflects minority voting

strength such as single-member distructs, the Attorney General will reconsider his determination upon being so advised.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes in question do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the changes required by the Home Rule Act legally unenforceable.

To enable this Department to meet

its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David R. Hunter at 202/633-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

DEC 12 1980

DSD: GWJ: DHH: ca
JJ 166-012-3
D5564

Washington, D.C. 20530

Ms. Treva Ashworth
Senior Assistant Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear Ms. Ashworth:

This is in reference to the status under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of the governing body of Edgefield County, South Carolina.

Act 1104 of 1966 (R1357, H2559) established the governing body of Edgefield County, defined the powers of that body, and established the method of its election. A thorough investigation of our files and records has led us to conclude that this act was never submitted either to the United States District Court for the

District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5.

If our information is correct, it is necessary that this Act either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it has neither the purpose nor the effect of denying or abridging the vote on account of race or color.

Should you elect to submit this Act to the Attorney General, please follow the procedures set forth in the Procedures for the Administration of Section 5 (28 C.F.R. Part 51).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within ten days of your receipt of this letter what action the State of South Carolina plans to take with respect to this matter. If you have any question concerning this

letter, please feel free to call Voting Section Attorney David H. Hunter, 202 724-7189. Please refer to File No. D5564 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

By:

GERALD W. JONES
Chief, Voting Section

cc: Karen LeCraft Henderson, Esq.
Charles W. Coleman, Esq.
Laughlin McDonald, Esq.
Armand Derfner, Esq.

Department of Justice
Washington

Nov 24, 1971

Mr. James H. Quackenbush, Jr.
Assistant Attorney General
State of South Carolina
Post Office Box 11549
Columbis, South Carolina 29211

Dear Mr. Quackenbush:

This is in reference to your letter of September 24, 1971, concerning the submission of H2206 to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

The Attorney General does not interpose any objections to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Sincerely,

s/David L. Norman

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

NO. 82-282

Office-Supreme Court, U.S.
FILED
AUG 6 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1982

THOMAS C. McCain and WILLIAM SPENCER, individually and on behalf of all those similarly situated,

Appellants,

vs.

CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W.T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS, and Richard A. Beals, individually and as members of the Board of Election Commissioners of Edgefield County, S.C.; and J.M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

JOINT APPENDIX

LAUGHLIN MCDONALD*
NEIL BRADLEY
CHRISTOPHER COATES
52 FAIRLIE ST., N.W.
ATLANTA, GA 30303-2188
404-523-2721

ARMAND DERFNER
5520 33RD STREET N.W.
WASHINGTON, DC 20015

HERBERT E. BUHL, III
533-A HARDEN ST.
COLUMBIA, SC 29205

COUNSEL FOR APPELLANTS
*COUNSEL OF RECORD

T. TRAVIS MEDLOCK
ATTORNEY GENERAL OF
SOUTH CAROLINA
P.O. BOX 11549
COLUMBIA, SC 29211

KAREN LECRAFT HENDERSON*
P.O. BOX 11458
COLUMBIA, SC 29211
803-765-1885

CHARLES W. COLEMAN
P.O. BOX 70
EDGEFIELD, SC 29824

COUNSEL FOR APPELLEES
*COUNSEL OF RECORD

TABLE OF CONTENTS

	Page(s)
Relevant Docket Entries	iv
Complaint	1-23
Answer.	24-7
Judgment on Decision by the Court	28-9
Order, April 17, 1980	30-76
Motion for Leave to File Attached Supplemental Complaint.	77
Supplemental Complaint.	78-83
Order, August 11, 1980.	84-89
Second Supplemental Complaint . .	90-101
Order, November 24, 1980.	102-03
Answer to Second Supplemental Complaint	104-09
Motion for Leave to Amend and Supplement Second Supplemental Complaint	110-15
a. Exhibit B - please submit letter, December 9, 1980 . .	116-18
Order, January 6, 1981	119-20
Answer to Amendment and Supplement to Second Amended Complaint	121-24
a. Exhibit A - preclearance letter, November 24, 1971 .	125-26
Order, March 10, 1981	127-28
Stipulations.	129-41
a. Exhibit A--Statutes, County Boards of Commissioners and County Supervisors.	142-53

Page(s)

b. Exhibit B--Act No. 1104 of 1966. 154-66

c. Exhibit C--Act No. 521 of 1971 167-70

d. Exhibit D--Preclearance letter, November 24, 1971 170

e. Exhibit E--Act No. 55 of 1967, Act No. 1318 of 1968, Act No. 1042 of 1974 . . . 171-82

f. Exhibit F--Ordinance and Resolution 183-87

g. Exhibit G--Objection letter, February 8, 1979 188

h. Exhibit H--Minutes of County Council, April 9, 1979, May 1, 1979. 189-90

i. Exhibit I--Letter, May 3, 1979 191-201

j. Exhibit J--Order, April 17, 1980 202

k. Exhibit K--Minutes of County Council, April 21, 1980. . 203-06

l. Exhibit L--Order, August 11, 1980 206

m. Exhibit M--Letter, November 3, 1978 207-11

n. Exhibit N--Letter, December 9, 1980. 211

o. Exhibit O--Letter, December 16, 1980 212-13

p. Exhibit P--Letter, December 31, 1980 214-15

Page(s)

q. Exhibit Q--Minuties of County Council, October 2, 1979. 216-18

Amendment to Stipulations. . . . 219-23

a. Exhibit R--Letter, April 12, 1979 224-27

b. Exhibit S--Letter, May 21, 1980 228-30

c. Exhibit T--Letter, June 17, 1980 231-32

d. Exhibit U--Letter, June 27, 1980 233-34

e. Exhibit V--Letter, July 17, 1980 235-36

Letter,. 237-40

Letter, September 14, 1971 . . . 241-43

Letter, September 24, 1971 . . . 244-45

a. Enclosure--Letter, September 21, 1971, registered voter statistics, election returns, Act No. 521 of 1971 (H.2206), Act No. 1104 of 1966 (page one) 246-248

RELEVANT DOCKET ENTRIES

February 26, 1974	Complaint
March 11, 1974	Answer of defendants
April 16, 1974	Hearing on motion and cross motion for summary judgment
May 16, 1974	Order granting summary judgment to plaintiffs on their first cause of action
May 20, 1974	Notice of appeal on behalf of defendants
June 19, 1974	Opinion of Fourth Circuit affirming in part and reversing in part
October 30, 1975	Order granting defendants' motion for summary judgment on plaintiffs' first cause of action
November 24-5, 1975	Trial by court
March 29, 1976	Motion by plaintiffs for preliminary injunction
April 14, 1976	Order denying preliminary injunction
April 15, 1980	Motion by Plaintiffs for preliminary injunction

April 17, 1980	Order granting plaintiffs an injunction
April 22, 1980	Judgment entered for plaintiffs
April 25, 1980	Motion by defendants to alter, amend or vacate
May 19, 1980	Hearing on motion to alter, amend or vacate
July 24, 1980	Motion by plaintiffs to file supplemental complaint
August 11, 1980	Order vacating Order of April 17, 1980
October 16, 1980	Motion by plaintiffs to file second supplemental complaint
November 24, 1980	Order granting plaintiffs' motion to file second supplemental complaint
December 5, 1980	Answer to second supplemental complaint
December 15, 1980	Motion by plaintiffs to amend and supplement second supplemental complaint
January 6, 1981	Order allowing plaintiffs to amend complaint

January 19, 1981	Answer to amended complaint
March 3, 1981	Motion by plaintiffs to compel discovery
March 10, 1981	Order denying motion to compel but directing defendants to update answers
March 25, 1981	Motion by plaintiffs for summary judgement on §5 issues
June 4, 1981	Designation of three-judge court
June 25, 1981	Motion by plaintiffs that grounds for disqualification exist as to Judge Russell
July 15, 1981	Order denying motion for disqualification
July 27, 1981	Petition for writ of mandamus
August 10, 1981	Order of Fourth Circuit denying petition for writ of mandamus
August 20, 1981	Hearing before three-judge court
April 30, 1982	Motion by plaintiffs for preliminary injunction
May 11, 1982	Order of three-judge court

May 11, 1982	Order of court denying plaintiffs' motion for preliminary injunction
June 7, 1982	Notice of appeal
July 29, 1982	Motion by plaintiffs to reinstate judgement
November 5, 1982	Hearing on motion to reinstate judgment

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
(AIKEN DIVISION)

THOMAS C. MCCAIN, ERNEST WILLIAMS and WILLIAM SPENCER, individually and on behalf of all those similarly situated, Plaintiffs, v. CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W. T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS and RICHARD A. BEALS, individually and as members of the Board of Election Commissioners of Edgefield County, South Carolina; and J. M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County, Defendants.	CIVIL NO. 74-281

COMPLAINT

1. The jurisdiction of this court is invoked under 28 U.S.C. §§ 1331 (a), 1343 (3), and (4), and 2201 et seq. This suit is authorized by 42 U.S.C. §1983. This is an action for appropriate equitable relief and a declaratory judgment to prevent deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States. The rights, privileges, and immunities involved herein include the right to unabridged participation in the electoral process and the right to due process and equal protection of the laws secured by the first, thirteenth, fourteenth and fifteenth amendments of the Constitution of the United States, and by 42 U.S.C. §§1971, 1973 and 1983.

2. The matter in controversy exceeds, exclusive of interests and costs, the sum of ten thousand ($10,000) dollars.

PARTIES

3. Plaintiffs Thomas C. McCain, Ernest Williams and William Spencer are adult Negro citizens and residents of Edgefield County, South Carolina and are duly registered to vote in said county and state in accordance with the provisions of §23-62, Code of Laws of South Carolina, 1962, as amended. Plaintiffs desire to have an equal voice with other citizens of Edgefield County. Thomas C. McCain lives in District No. 2 of Edgefield County composed of Trenton, Central and Bacon precincts. Plaintiff Earnest Williams lives in District No. 3 of Edgefield County composed of Edgefield No. 1 and Edgefield No. 2 precincts. Plaintiff William Spencer lives in District No. 1 of

Edgefield County, composed of Johnston No. 1, Johnston No. 2, and Long Branch precincts.

4. The plaintiffs bring this action on their own behalf and on behalf of all others similarly situated and against the defendants individually and in their official capacities pursuant to Rule 23 of the Fed. R. Civ. Proc. Plaintiffs' class includes all Negro citizens of Edgefield County, and all citizens of the parts of Edgefield County lying in Districts No. 1 and 3.

The prerequisites of subsections (a) and (b) (2) of Rule 23 are satisfied. There are common questions of law and fact affecting the several rights of citizens to vote. Additional common questions of law and fact exist affecting the several rights of all plaintiffs to have Negro citizens not be deprived of the right to

vote in Edgefield County or be treated differently from other citizens in voting. The members of the class are so numerous as to make it impracticable to bring them all before this court.

The claims of the plaintiffs are typical of the claims of the class. A common relief is sought. The interests of the class are adequately represented by the named plaintiffs. The prosecution of separate actions by individual members of the class would create a risk of: (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or

substantially impair or impede their ability to protect their interests. Furthermore, the parties opposing plaintiffs' class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Defendants Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W.T. Timmerman, are adult citizens and residents of Edgefield County, and are the duly elected and acting members of the Edgefield County Council. They are sued individually and in their official capacities.

Their duties are set out in Act No. 1104, Acts and Joint Resolutions of South Carolina, 1966, An Act To Divide Edgefield County Into Districts For Certain Purposes And to Provide A System of County Government for Edgefield County, at §6 thereof as follows:

Section 6. Powers and duties.

--In addition to the foregoing and other statutory duties and powers, the council is hereby empowered to legislate in reference to such matters of local concern with Edgefield County as herein provided and shall have the following powers:

1. To adopt, use and alter a corporate seal.

2. (a) To acquire by purchase or gift real property in the name of Edgefield County.

(b) To lease, sell or otherwise dispose of real and personal property in the name of Edgefield County, including all such property now owned by the county.

(c) To acquire tangible personal property and supplies,

3. To make contract and to execute all instruments necessary or convenient for carrying out the functions committed to it.

4. To exercise the powers of eminent domain in the manner provided by the general laws of the State of South Carolina for procedure by any county, municipality, or authority organized under the laws of this State, or by the South Carolina State Highway Department, or by railroad corporations, or in any manner provided by laws, as the board may, in its discretion, elect .

5. To make appropriations and to levy taxes therefor for corporate purposes and educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors county officers, and for litigation, quarantine and court expenses and for ordinary county purposes, to support paupers, and to pay past indebtedness.

6. To provide for the receipt, custody, allocation and disbursement of funds accruing to Edgefield County.

7. To provide within the county special services which are considered necessary to public health and welfare.

8. To incur indebtedness in anticipation of the collection of taxes which have been levied.

9. To issue bonds pledging the faith and credit of Edgefield County for the purposes authorized by and within the limits prescribed by the Constitution of the State of South Carolina, including educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, county officers and for litigation, quarantine and court expenses and for ordinary county purposes, to support paupers, and pay past indebtedness. Bonds issued pursuant to this section shall mature serially in such manner as the council may provide. They may contain provisions permitting their redemption prior to their stated maturity at premium figures. The council shall also be empowered to determine the rates of interest the bonds may bear, the method of their execution and

sale and all other matters incident to the proper issuance and delivery of the bonds. It shall be empowered to order the levy and collection of ad valorem taxes upon all taxable property in Edgefield County without limitation as to rate or amount sufficient to provide for the payment of the principal and interest on these bonds.

10. To enter into agreements on matters of local concern with agencies and instrumentalities of the Federal Government, the State Government, political subdivisions of the State, and educational charitable and eleemosynary institutions.

11. To regulate, control and provide for the construction, maintenance, operation and use of public streets, roads, bridges, sidewalks, drains, courthouses, jails, buildings, prison farms, and other public improvements and facilities.

12. To prescribe methods of accounting for county and departments.

13. To supervise and regulate the various departments of the county, except that the duties and functions now provided by law for the offices of the sheriff, clerk of court, probate judge, coroner, and superintendent of education shall not be altered.

14. To create such agencies and departments as may be deemed advisable, and to prescribe their duties and functions; and to alter or transfer the duties and functions of existing offices, agencies or departments.

15. To employ all county employees whose election by the people is not provided for by law and to establish policies affecting the selection, appointment, compensation, dismissal and other matters in the control of the administrative employees of the county government.

6. Defendants Norman Dorn, John S. Edwards and Richard B. Beals are adult citizens and residents of Edgefield County and are the duly appointed or elected and acting members

of the Board of Election Commissioners of Edgefield County and are sued individually and in their official capacities. Pursuant to §23-400, Code of Laws of South Carolina, 1962, as amended, they are responsible for conduct of general or special elections in Edgefield County.

7. Defendant J.M. Pendarvis is an adult citizen and resident of Edgefield County and is the President of the Executive Committee of the Democratic Party of Edgefield County. Pursuant to §23-396 et seq., Code of Laws of South Carolina, 1962, as amended, the Executive Committee is responsible for conduct of Democratic Party primary elections in Edgefield County. Defendant Pendarvis is sued individually and in his official capacity.

FACTS

8. Act No. 521 of 1971, An Act to Amend Act 1104 of 1966, As Amended, Relating To

A System of County Government For Edgefield County, So As To Increase The Number Of Districts And The Number Of County Council Members, provides as follows:

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. Edgefield County divided into districts.-- Section 1 of Act 1104 of 1966 is amended by striking it out and inserting:

"District No. 1 shall be composed of Johnston No. 1, Johnston No. 2 and Long Branch precincts.

District No. 2 shall be composed of Trenton, Central and Bacon precincts.

District No. 3 shall be composed of Edgefield No. 1 and Edgefield No. 2 precincts.

District No. 4. shall be composed of Merriwether, Colliers, Cleveland and Kendall precincts.

District No. 5 shall be composed of Red Hill, Rock Hill, Moss, Meeting Street and Pleasant Lane precincts."

Section 2. Edgefield Council.-- Section 3 of Act 1104 or 1966, as amended, is further amended by striking it out and inserting:

"Section 3. There is hereby created the Edgefield County Council (council) which shall be composed of five members who shall be elected in each general election to serve for terms of two years and until their successors are elected and qualify. One member with the largest plurality shall be elected by the county at large from each of the five districts of the county. Candidates shall file and be nominated as candidates are for other county offices. Vacancies on the council shall be filled by appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council may employ a county administrator who shall be the administrative officer for the county at such a salary and term as is determined by the council. The council shall require such bond of the county administrator as it deems advisable. The council shall not elect one of its members as county administrator. Meetings of the council shall be held whenever necessary but not less than twice monthly. Members of the council shall receive a monthly salary of one hundred twenty five dollars. A chairman shall be elected annually at the first meeting of the council and shall receive an additional

> salary of twenty-five dollars per month. The Edgefield County suprevisor and the county commissioners shall continue to exercise their duties only as to county roads and bridges and under the supervision of the council until the expiration of their terms, at which time the offices of county commissioner and county supervisor for the county shall be abolished."
>
> Section 3. Time effective.--This act shall take effect upon approval by the Governor.
>
> Approved the 25th day of June, 1971.

9. According to the 1970 United States Census of Population, the population of Edgefield County is 15,692 of which number 7,586 are white and 8,104 are black. Were the Edgefield County Council apportioned on the basis of ideal population equality, each of the five county council districts would contain 3,138 people. Plaintiffs allege however that District No. 1 contains 4,367 people or a variance of +39.2% from the ideal district size;[1] District No. 2 contains

1. Variance is calculated by dividing actual by ideal district population.

2,515 people or a variance of -19,8% from ideal district size; District No. 3 contains 4,376 people or a variance of +39,5% from ideal district size; District No. 4 contains 2,332 people or a variance of -25.7% from ideal district size; and District No. 5 contains 2,102 people or a variance of -33.03% from ideal district size.

10. One result of the existing allocation of council seats is that citizens residing in District No. 1 are under-represented by approximately 39.2%, and those residing in District No. 3 are under-represented by 39.5%, thus having their voting power diluted.

11. The several parts of Edgefield County have, according to the 1970 Census, varying proportions of Negro citizens. The Edgefield census county division has 45% Negro citizens; the Edgefield North census county division has 57%; the Edgefield South census

county division has 40%; the Johnston census county division has 53%; the Merriwether census county division has 38%, the Pleasant Lane census county division has 77%, and the Trenton census county division 66%.

12. Another result of the existing allocation of counsel seats, insofar as elections are held at large in Edgefield County rather than in one seat constituencies, is that areas having high concentrations of Negro population are thrown together with areas having low concentrations of Negro population thereby diluting the voting power of Negro citizens and insuring that the council will be exclusively or predominantly white.

13. There has been a history of official racial discrimination in Edgefield County, South Carolina including the right to register to vote.

14. The South Carolina rule requiring a majority vote as a prerequisite to nomina-

tion in primary elections has the effect of diluting the voting strength of plaintiffs and members of their class.

15. Plaintiffs and their class have been unable to elect Negro citizens to state and local offices.

16. No Negro been elected or served as a member of the Edgefield County Council.

17. The dominant political party in Edgefield County has failed to slate blacks for political office.

18. The Edgefield County Council has evidenced a lack of good faith concern for the political and other needs and aspirations of the black community.

19. The dominant political party in Edgefield County has in the past relied upon campaign tactics designed to exclude or dilute black voting strength.

20. Plaintiffs and their class have suffered from and continue to suffer from

the effects of invidious discrimination and treatment in education, employment and economics.

21. Plaintiffs and their class have had less opportunity than white residents of Edgefield County to participate in the political process and to elect representatives of their choice.

22. The next general election for the Edgefield County Council will be in November, 1974, as provided for by §14-1815, Code of Laws of South Carolina, 1962, as amended.

CAUSES OF ACTION

23. The present apportionment of the Edgefield County Council dilutes the relative strength of voters living in Districts No. 1 and 3 to such an extent as to violate the rights of plaintiffs and other voters similarly situated under the first and due process and equal protection

clauses of the fourteenth amendments of the Constitution of the United States.

24. The present apportionment of the Edgefield County Council, including holding elections at large, dilutes the relative strength of the class of black voters in Edgefield County in violation of the rights of plaintiffs and others similarly situated guaranteed by the first, thirteenth, fourteenth and fifteenth amendments of the Constitution of the United States.

25. There is a real and actual controversy between the parties. Plaintiffs have no adequate remedy at law. Plaintiffs are suffering irreparable injury as a result of the apportionment challenged herein and that apportionment will continue unless enjoined by this court.

26. The reapportionment scheme described above is maintained by the individual defendants under color of law of the State

of South Carolina and under color of the defendants' respective offices as officers and agents of the State.

WHEREFORE, plaintiffs respectfully pray:

a) that this court find that the plaintiffs are adequate representatives of their class and allow this cause to proceed as a class action;

b) that this court issue a preliminary injunction to be made permanent later enjoining defendants from holding further elections under the present apportionment of the Edgefield County Council;

c) that this court issue a declaratory judgment that the actions of the defendants in maintaining the present dis-

tricting of the Edgefield County Council is violative of the rights of plaintiffs and the class they represent secured by the first amendment, the thirteenth amendment, privileges and immunities, equal protection and due process clauses of the fourteenth amendment and the fifteenth amendment of the Constitution of the United States;

d) that this court order the Edgefield County Council to reapportion itself in a manner that complies with the one-man, one vote mandate of the Supreme Court of the United States and which does not have the effect or purpose of diluting the voting strength of Negro citizens of that county;

e) that this court issue such

further relief including costs and attorneys fees as may be just and proper; that this court retain jurisdiction of this cause.

Respectfully submitted,

s/Laughlin McDonald

Laughlin McDonald
Neil Bradley
Emily Carssow
52 Fairlie Street, N.W.
Atlanta, Georgia 30303

Epstein & McClain
4 Gillon Street
Charleston, South Carolina

Of Counsel:

Melvin L. Wulf, Esquire
22 East 40th Street
New York, New York 10016

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ERNEST WILLIAMS AND WILLIAM SPENCER, individually and on behalf of all those similarly situated, Plaintiffs, vs. CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W.T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS and RICHARD A. BEALS, individually and as members of the Board of Election Commissioners of Edgefield County, South Carolina; and J.M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County, Defendants.	ANSWER

The above named Defendants, by their Answer, would respectfully show unto the Court:

1. That the Defendants deny the allegations of Paragraph 1.

2. That the Defendants deny the allegations of Paragraph 2.

3. That the Defendants do not have sufficient information to affirm or deny allegations of Paragraph 3.

4. That the Defendants deny the allegations of Paragraph 4.

5. That the Defendants admit Paragraphs 5 and 6 of the Complaint.

6. That J.M. Pendarvis is the Executive Committeeman of the Democratic Party of Edgefield County, and as such is not a proper party to this action as his duties are in no way connected with, nor does he participate in an official capacity in the governing body of the said County of Edgefield.

7. That the Defendants admit Paragraph 8 of the Complaint.

8. That the Defendants deny all the remaining allegations of the Complaint and demand strict proof thereof. Further answering the Complaint, the Defendants allege that since all members of the County Council of Edgefield County are elected from the County at large, there can be no diluting of the voting strength of the Negro or any other minority group. Further, since there is a larger black population in the County of Edgefield than white, that that part of Act No. 521 of 1971, An Act To Amend Act No. 1104 of 1966, As Amended, Relating To A System Of County Government For Edgefield County, So As To Increase The Number of Districts And The Number Of County Council Members, weighs in favor of the black population.

WHEREFORE, the Defendants having

fully answered the Complaint of the Plaintiffs, pray that the same be dismissed with costs.

CHARLES W. COLEMAN

/s/ Charles W. Coleman
Attorney for Defendants

Edgefield, South Carolina

March 8, 1974

[Certificate of service omitted in printing]

JUDGMENT ON DECISION BY THE COURT

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

CIVIL ACTION FILE NO. 74-281-9

THOMAS C. McCAIN, ERNEST WILLIAMS and WILLIAM SPENCER, Individually and on behalf of all those similary situated ,

Plaintiffs

- vs -

CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A HARLING, AND W.T. TIMMERMAN, Individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS and RICHARD A. BEALS, Individually and as members of the Board of Election Commissioners of Edgefield County, South Carolina; and J.M. PENDARVIS, Individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Defendants

This action came on for hearing before the Court, Honorable Robert F. Chapman, United States District Judge, presiding, and Defendants' Motion for Preliminary Injunction having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of the plaintiffs and that the defendants are hereby enjoined from holding any further elections for Edgefield County Council until a new and constitutional method of electing members to County Council has been adopted pursuant to applicable state law.

Dated at Columbia, South Carolina, this Twenty-second (22) day of April, 1980.

MILLER C. FOSTER, JR.
CLERK OF COURT

/S/
Mary Lynn Phipps
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ERNEST WILLIAMS AND WILLIAM SPENCER, individually and on behalf, of all those similarly situated,

Plaintiffs,

vs.

CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W.T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS, and RICHARD A. BEALS, individually and as members of the Board of Election Commissioners of Edgefield County, South Carolina; and J.M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Defendants.

This action challenges the method by which members of the Edgefield County Council are elected. Plaintiffs are certain black, adult citizens of Edgefield County and allege that the present method of election violates the one man - one vote principle of Wesberry v. Sanders, 376 U.S. 1 (1964), and that such system also dilutes the voting strength of the black citizens of Edgefield County in violation of the principles set forth in Whitcomb v. Chavis, 403 U.S. 124 (1971), and White v. Regester, 412 U.S. 755 (1973).

The defendants are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the executive committee of the Edgefield County Democratic Party. Each defendant is sued individually and in his official capacity.

The complaint raises two issues. The

first alleges that the present apportionment of the Edgefield County Council dilutes the relative strength of the voters living in Districts One and Three to such an extent as to violate the rights of plaintiffs, and other voters similarly situated, under the First and Fourteenth Amendments to the Constitution of the United States.

The second claim asserts the present apportionment of Edgefield County Council, including holding elections at-large, dilutes the relative strength of the class of black voters of Edgefield County in violation of their rights and the rights of other blacks similarly situated guaranteed by the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

The complaint prays for a declaratory judgment that the Edgefield County plan violates the plaintiffs' constitutional

rights; for an injunction prohibiting the defendants from holding further elections under the plan; and for an Order requiring Edgefield County Council to reapportion itself in a constitutional manner.

Defendants deny that the Edgefield County Council is unconstitutionally composed or elected and asks that the complaint be dismissed.

On May 16, 1974, the Court[1] granted a motion for summary judgment by the plaintiffs holding that because of the unequal approportion [sic] of certain of the districts within the county that the one man - one vote principle had been violated. On appeal this matter was heard and decided with Lytle v. Commissioners Election of Union County, 509 F.2d 1049 (4th Cir. 1974).

---

1. Honorable Sol Blatt, Jr.

The Circuit Court found that the Edgefield County plan did not have such a variance or disparity in population among the districts as to require the deletion on constitutional grounds of the resident requirements imposed by the statute. Page 1054. Just prior to the trial of this cause this Court granted defendants' motion for summary judgmeny based upon the finding of the Appellate Court which states:

> We are of the opinion that the Edgefield County plan, as presently provided by statute, represents a proper balancing of interest and without such population variances among the districts as to require the deletion on constitutional grounds of the residence requirements imposed by the statute under attack. There is not the wide disparity in population among the districts as was the case in Union County. It is not obvious that a minority, either in numbers or in territorial or economical interest,

> can dominate the Board. The several districts are of sufficient size and numbers that a residence requirement does not appear to be an irrational method of achieving a form of county government, elected by all voters of the county but, through its residence requirement, assuming some attention to territorial interest. We conclude, therefore, that the District Court was in error in invalidating the statutory election procedure for the members of the Edgefield County Board. 509 F.2d at 1054

The issue remaining is whether the apportionment of the Edgefield County Council, which includes at-large election of the council members and requires that each of the five members of council reside in a separate residency district, dilutes the voting strength of the black citizens of Edgefield County in violation of their constitutional right.

After extensive pretrial discovery this matter was tried before the Court on November 24 and 25, 1975. Thereafter extensive briefs and proposed findings of fact and conclusions of law were submitted by the parties. The matter was then delayed a long time because the Court was advised the South Carolina Legislature would adopt a new plan for Edgefield County. After considering the testimony and over 100 exhibits, as well as studying the applicable law, the Court makes the following findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. That the plaintiffs are black citizens of Edgefield County, South Carolina.

They are duly registered to vote in that county. Plaintiff McCain lives in District Two of Edgefield County, plaintiff Williams lives in District Three and plaintiff Spencer lives in District One.

2. That the defendants Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W.T. Timmerman are or were at the time this action was commenced the duly elected and acting members of the County Council of Edgefield.

3. That Norman Dorn, John S. Edwards and Richard A. Beals are or were at the time this action was commenced the acting members of the Board of Election Commissioners of Edgefield County.

4. That J.M. Pendarvis is or was at the time this action was commenced the President of the Executive Committee of the Democratic Party of Edgefield County.

5. That prior to 1966 the county government of Edgefield County consisted of a Board of County Commissioners which was composed of a county supervisor, elected at-large in the county, and two commissioners, who were appointed by the governor upon recommendation of the County Legislative Delegation. These two commissioners ran at large for the office and the winners were recommended by the County Delegation to the Governor for appointment. The supervisor had general jurisdiction in the county over roads, bridges, ferries and paupers and in matters relating to taxes, disbursement of public funds for county purposes and in other matters necessary for the internal improvement and local concerns of the county. This County Board of Commissioners did not have power to tax, incur bonded indebtedness, or appoint members of county boards, commissions

and agencies or the right of eminent domain nor the right to prescribe procedures for budgeting and accounting. These aforementioned powers belong to the local legislative delegation which at that time consisted of one senator and one or more members of the House of Representatives, all of whom were residents of Edgefield County. These elected officials exercised their powers through the enactment of local bills in the General Assembly.

6. Prior to 1966, the state senator from Edgefield County and the members of the House of Representatives were elected at-large by the voters of Edgefield County. In that year O'Shields v. McNair, 254 F.Supp. 708 (D.C.S.C. 1966) required the reapportionment of the State Senate and it became obvious that Edgefield County with such a small population would probably lose its

resident senator. Therefore, on June 1, 1966 Act No. 1,104 of 1966 was passed creating Edgefield County Council, which had three members and was elected from the county at-large from each of three residency districts set forth in the Act. Section 4 of the Act vested in Council the power to recommend appointments with the approval of the Edgefield County members of the House of Representatives and the powers of Council were set forth and included the rights: to exercise the powers of eminent domain; to make apportionments and levy taxes, to incur indebtedness, to issue bonds, to order the levy and execution of ad valorem taxes; to prescribe methods for accounting for county offices and departments and supervise and regulate the various departments of the county.

7. By Act No. 521 of 1971 the number

of members of county council was increased to five and the residency districts were also increased from three to five.[2]

8. Prior to 1966 county governments in South Carolina had been controlled by the members of the General Assembly and particularly the state senator. Since local acts, "known as Supply Bills" were required to be passed each year to levy taxes and appropriate monies for the operation of the counties, and since these bills required passage by both the House of Representatives and the State Senate, the senator exercised great control (actually a veto) over the operation of his county. The purpose of Act 1104 of 1966 was to create a strong county government with proper representation from the urban and rural areas. By requiring the candidates for

---

2. These five members are elected for four-year terms at staggered two-year intervals.

county council to run at-large rather that in single member districts, it was hoped that council members would be responsive to all voters in the county and reduce factionalism or sectionalism. By requiring the candidates to reside in a certain district, one area of the county could not dominate council membership. The at-large feature of the election process was in keeping with the prior election plan for county commissioners and almost all other county officers in South Carolina.

8. The increase in membership from three to five passed in 1971 was made as an effort to provide wider representation on council and to provide rural areas with a greater voice in county government.

9. There was no evidence that either Act 1104 creating county council or Act 521 expanding its membership were enacted for the purpose of diluting black voting strength. But this does not mean that they do not have the effect. The residence

districts established by both 1104 and 521 are based upon voting precinct lines of long standing and which anti-date the creation of county council.

10. The South Carolina Attorney General submitted to the Attorney General of the United States the changes made under Act No 521. After review pursuant to Section 5 of the Voting Rights Act of 1965 the Attorney General of the United States on November 24, 1971 informed South Carolina Attorney General that he interposed no objection to the implementation of Act No. 521.

11. At the time of the Attorney General's letter (November 24, 1971) South Carolina had a "full slate" voting law. (§23-357 S.C. Code 1962). This is no longer the law[3] of South

---

3. This change resulted from a black challenge in Stevenson v. West, C.A. 72-45 (D.S.C. unreported case 4/7/72). S.C. Republicans had failed in their suit eight years earlier. Boineau v. Thornton, 235 F.Supp. 175 (D.S.C. 1964), aff'd 379 U.S. 15 (1964).

Carolina and minorities, both of race and of party, can increase their effective voting strength by "single-shot" voting, rather than being required to vote for candidates equal in number to the offices to be filled.

12. As of the 1970 census Edgefield County's population was 8,104 black and 7,586 white. The total voting age population was 9,364, of which 4,167 or 44.5% were black and 5,195 or 55.5% were white. Although blacks make up 51.6% of the population, they comprise only 44.5% of the voting age population obviously due to the age structure of the black and white populations of the county.

13. As of July 31, 1975 there were 5,685 registered voters in Edgefield County, 2,254 being black and 3,429 white. Therefore, the black citizens comprise 51.6% of the total population, 44.5% of the voting age population and 39.6%

of the registered voters. For whites these figures are 48.3%, 55.5% and 60.3% respectively. These figures reflect that 54% of the black voting population of the county is currently registered to vote.

14. Of the five council districts[4] in Edgefield County two contain a majority of black registered voters. In District Two blacks make up 61.8% of the total registered voters and 52.3% in District Five. The black percentage in Districts One, Three and Four are 30.8%, 36% and 18% respectively.

15. Of the 46 counties in South Carolina, Edgefield ranks 37th in size with

---

4. The residence districts follow precinct lines, as follows

District 1:	Johnston I, Johnston II, Long Branch
District 2:	Trenton, Central, Bacon
District 3:	Edgefield I, Edgefield II
District 4:	Merriweather, Colliers, Cleveland, Kendall
District 5:	Red Hill, Rock Hill, Moss, Meeting Street, Pleasant Lane

482 square miles. According to the 1970 census Edgefield County is 41st in total population and 37th in population per square mile with 32.6 persons per square mile. The rural population is 10,390 or 66.2% and the urban population is 5,302. The rural population is 54.3% black and a majority of these persons are located in the northern and eastern parts of the county.

16. Black citizens of Edgefield County now register to vote on an equal basis with whites. As was true in many other areas of the south, it was quite difficult, and often impossible, to register to vote until approximately 30 years ago. At the time of the passage of the Voting Rights Act in 1965 less than 20% of the voting age blacks of Edgefield County

were registered,[5]

17. The Democratic Party has always dominated government in Edgefield County. Until the past 15 years the primary of this party was the only meaningful election anywhere in the state. Blacks were excluded from participation in the Democratic primaries until Elmore v. Rice, 72 F.Supp. 516 (E.D.S.C. 1947) aff'd, 165 F.2d 387 (4th Cir. 1948). But even after this landmark decision blacks in Edgefield County found it very difficult to register and threats were made against some blacks who did register.

5.

	W	B
VAP	4,103	3,764
Registration	3,950	650
%	96.3%	17.3%

[United States Commission on Civil Rights, Political Participation 252-53 (1968)]

18. No black has ever received a Democratic nomination or been elected to public office in a contested election in Edgefield.[6]

19. Blacks now participate in the affairs of the Democratic Party and this participation has grown in recent years. Blacks have participated within the organization of the Democratic Party and in the selection of its officials. They have also participated in organizing the precincts. At the 1974 County Convention for the Democratic Party approximately one-third of those in attendance were black. Of the 15 delegates elected by the County Convention to the State Convention of the Democratic Party, four were black. The Edgefield Democratic Party has a black vice-chairman and the alternate committeeman to the State Executive Committee is also a black.

---

6. A black was appointed to a vacancy on the County School Board and has been unopposed in subsequent elections.

20. Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible, although the percentage of registered voters who were black ranged from 33% in 1970 to 40% in 1974. The figures, arranged separately for primaries, general elections and a school board election, are as follows:

Primaries	#W	#B	%B
1970	68	4	5.5%
1972	69	4	5.4%
1974	55	9	10.8%
All primaries	192	17	8.1%
General Elections			
1970	87	7	7.4%
1971	50	1	1.9%
1972	86	13	13.2%
1974	58	12	17.1%
All General Elections	281	33	15.4%
School Board Election			
1974	34	4	10.5%
Total (all elections)	507	54	9.6%

Elections conducted in 1970-1974 are as follows:

1970: School Board, Primary, General
1971: Special General
1972: Primary, General
1974: School Board, Primary (including runoff), General

By analyzing these elections, it was possible to get a clear picture of how elections take place in Edgefield County. The Court's overall finding is that blacks were virtually totally excluded up to 1970, and that since that time they have progressed to minimal tokenism.

21. The race of those appointed to serve as precinct election officials has traditionally been regarded as an important barometer of the degree of minority participation in the voting process. In Edgefield County, precinct workers are appointed not by precinct officials but by county officials -- the County Democratic

Executive Committee for primary workers, and the County Election Commission for general election workers, Evidence concerning the past few years' elections in Edgefield County showed exclusion of blacks (by officials exercising state action) in a critical part of the election process.

22. Of the 17 precincts in Edgefield County, fully 8 have never had a black person serve at the polls, at any of the eight elections conducted since 1970, primary, general, or school board. These precincts are shown below, with the total number of white officials who have served during this period:

	W	B
Bacon	27	0
Central	27	0
Cleveland	28	0
Colliers	30	0
Kendall	30	0
Long Branch	27	0
Moss	26	0
Red Hill	30	0

23. Even among precincts whose voters are predominately black, county officials and county Democratic Party officials have refused to appoint any significant number of black precinct workers. The number of precinct workers, by race, for all elections since 1970 is shown below for the 5 precincts which are majority black:

	% B. Reg.	#W	#B	% B
Johnson I	(51%)	38	5	11.6%
Meeting St.	(55%)	28	1	3.4%
Pleasant Lane	(68%)	24	2	7.6%
Rock Hill	(80%)	28	1	3.4%
Trenton	(66%)	35	10* [7]	22.2%
Total		153	19	11.5%

24. The evidence also showed that in

---

7. Five of the 10 black workers appointed at Trenton (McCain's precinct) have come in the two elections since black voters captured control of the precinct during the 1974 precinct organization meeting. Even in both those elections, a majority of the workers appointed were white.

each election certain officials are given greater responsibility [Edwards testimony] and work and are paid for more than one day. Records for the 1971 and 1974 elections showed 4 whites and no blacks in these positions. (During the 1972 election some precincts worked all workers for two days, but here again 22 whites worked more than the minimum number of days, compared to 0 blacks.)

25. Evidence was also presented concerning the race of the precinct Democratic Committee members. The number of such precinct officials, by race, for 1970 and 1974, is shown below:

	W	B	% B
1970 (12 precincts reported)	34	1	2.8%
1974 (17 precincts)	43	4	8.5%
Total	77	5	6.1%

26. The evidence established that voters in Edgefield County, when confronted

with a race between black and white candidates, vote along racial lines. This behavior pattern is very clear as to white voters, many of whom will not vote for a black candidate. This fact is evident both from a visual examination of election results and from the statistical analysis of those results done by plaintiffs' expert witness, Dr. John Suich.

27. Four black candidates have run for office in Edgefield County, 1970-74, two for school board in 1970 (Lanham and Senior), one for County Council in 1974 (McCain), and one for South Carolina House of Representatives in 1974 (Brightharp). One of these candidates, Brightharp, also was in a runoff.

28. Examination of the election results shows an extraordinarily high correlation in every election between the votes received by a black candidate and

the racial composition of the precinct, This is true for all precincts, but is especially clear in the precincts which are virtually all white. In these precincts, in each election, the votes cast for black candidates ranged from zero to just a handful:

1970 School Board Election

	1970 % B Reg.	W	B	W	B
Colliers	8%	66	2	68	0
Long Branch	10%	30	5	30	5
Red Hill	1%	92	0	92	0
				(County	
	1974 %	(House)		Council)	
	B Reg.	W	B	W	B
Cleveland	5%	45	0	37	4

(House Runoff)

W	B
49	4

				(County	
Colliers	1974 %	(House)		Council)	
	B Reg.	W	B	W	B
	4%	81	2	78	6

(House Runoff)

W	B
87	4

	1974 % B Reg.	(House) W	B	(County Council) W	B
Long Branch	12%	45	3	43	7

(House Runoff)

W	B
51	5

	1974% B Reg.	W	B	W	B
Red Hill	1%	66	0	53	9

(House Runoff)

W	B
67	5

29. The Edgefield County pattern of racial bloc voting was confirmed by plaintiffs' expert witness, Dr. John Suich, who testified that the statistical correlation between the race of the voter and the race of the candidate was extraordinarily high, in the range of 0.90 (on a scale of -1.00 to +1.00) for each election in which a black candidate has run. Dr. Suich testified that the correlation was not just statistically significant but overwhelming, and the Court

agrees. The correlation between race and voting pattern went up, not down, from 1970 to 1974.

30. The testimony also showed that in both 1970 and 1974, each of the two black candidates received almost identical numbers of votes in each precinct. This was true for each precinct, but again was especially marked for those precincts which are virtually all white. In 1970, for example, the two black candidates lost to the two white candidates by identical votes in the precincts of Central (43-6), Cleveland (51-1). Kendall (66-18), Long Branch (30-5), and Red Hill (92-0). In six more precincts, the difference between the two blacks (and, correspondingly, between the two whites) was three votes or less. In 1974, the two black candidates lost in Central by identical votes of 35-14, and the votes in eight other precincts varied

by eight votes or less.

31. The nearly identical votes cast for the two black candidates in 1974 were the more striking because of the evidence about the differences between them. T.C. McCain has long been known as an "activist" and has been engaged in many controversies with county officials. George Brightharp has not been engaged in controversial issues and has had a relatively close relationship with county officials and other white people. The evidence shows that these differences were wholly outweighed by the one common characteristic shared by McCain and Brightharp -- their race.

32. The testimony of plaintiffs' witness Brightharp and defendants' witness H. Sam Crouch shows that blacks do not have equal access to the election process and the present system dilutes their strength. Brightharp testified that he had decided to

run for office in the hope that voters would decide on the basis of issues or the merits of the candidates and in the hope that racial politics was a thing of the past. After analyzing the election and the returns, he concluded, sadly, that racial politics is ever present in Edgefield County, and that because of it, blacks are not able to participate fairly as Edgefield County voters.

Mr. Crouch, Secretary of the Edgefield County Democratic Party, testified that blacks do not paritcipate as equals in the electoral process of Edgefield County, and that the present system is the legacy of a long history of racial segregation. He said that there has been some improvement but it must come slowly, and indicated that no greater speed would be possible voluntarily -- that it would take a court order .

33. Juries. Blacks were historically excluded from jury service in Edgefield County. As late as 1968 and 1970, the grand jury had no blacks at all, while the trial jury venires in those years had few blacks. It was not until suit was brought in 1971 that the jury list was reconstituted to include blacks fairly. Bright v. Thurmond CA No. 71-459 (D.S.C. 1971).

34. Chain Gang. The Edgefield County Council historically kept the county chain gang segregated by race, until a suit was brought in 1971. Carracter v. Morgan, CA No. 71-314 (D.S.C. Nov. 17, 1971); 491 F.2d 458 (4th Cir. 1973).

35. Blacks have been excluded from county employment by the County Council, even up to the present. No current black employee began service before 1971. Until the very eve of the trial in this case, black employment was negligible. It was

only when trial was about to begin that the County suddenly began hiring blacks in any numbers.

	W	B
As of 9/1/75	33	4
From 9/1/75 to 11/12/75	8	11

In addition, blacks are heavily concentrated at the lower wage levels. Of the last minute hires, none of the 11 blacks earns more than $5,460, while none of the 6 white males earns less than that figure. (Two white females earn less than $5,460. For all county full-time employees, the salary levels are as follows:

	WM	WF	BM	MF
Less than $5,460	0	7	1	4
$5,460	2	0	7	0
More than $5,460	22	6	2	0

36. Blacks have been excluded by the County Council in appointments to county boards and commission. The date of trial membership of boards and commissions appointed

by the County Council is as follows:

	W	B
Fire Study Committee	7	0
Human Relations Committee	10	9
Emergency Ambulance Service Board	3	0
Airport Commission	3	0
Planning Board	7	2
Tech District	1	0
Board of Tax Assessors	5	0
Tax Board of Appeals	3	0
Center for Mental Health Services	1	0
Health Professional Scholarship Board	5	0
Registration Board	3	2
Mini-Bottle Commission	6	1
Alcohol & Drug Abuse Commission	6	1
Hospital Board	7	0
Water & Sewer Authority Board	4	1
Migrant Health Program	9	0
Department of Social Services	3	2
Upper Savannah Regional Planning Board	3	1
Senior Citizens Council	9	6
Total	95	25
Total excluding Human Relations Commission and Senior Citizens Council	76	10

37. The Human Relations Committee

was described by two witnesses, T.C. McCain and Willie Bright. McCain testified that he had been instrumental in persuading the County Council to create such a committee, and that the Council had set a condition that there be a white majority and white chairman. Bright a member of the Committee, confirmed McCain's account of the Committee's origin, and testified that after a few meetings, the chairman (white) resigned, and was replaced by another white. After one more meeting, the new chairman never called another, and the Committee had become defunct. When asked on cross-examination why the black members had not called a meeting themselves, Bright testified that the lifelong traditions of Edgefield County and the conditions under which the Committee had been set up did not allow for any such exception to white dominance.

38. The public schools of Edgefield County were historically segregated by race.

School officials' first response to the ban on school segregation did not come until well after the 1954 Brown v, Board decision, and was a "freedom of choice" plan which resulted in fewer than 3% of the black students attending school with white students, It was not until September 1970 that any appreciable amount of desegregation took place, under a plan finally approved by the U,S, Department of HEW, After formal desegregation began to take place there was an effort by school trustees to maintain the racially discriminatory character of the schools. Under the school board's 1970 plan, Strom Thurmond High, the formerly white school, was designated the high school for all students. It kept "Confederate Rebel," and "Dixie" as the school nickname and school song, and kept the use of the Confederate Flag as the school symbol at athletic and other events,

Black citizens complained that Strom Thurmond High was being maintained as an essentially segregated school, and that the school symbols were badges of slavery, white racism and were degrading indicia of second-class citizenship for blacks. The school board promptly resolved that "the existing traditions now in force in all schools of the system will continue," and secured an ex parte injuntion against blacks' gathering or demonstrating against the school policies. Blacks affected by the injunction were never able to obtain a hearing on their motion to dissolve the ex parte injunction, which led this Court to vacate it. McCain v. Abel, CA No. 70-1057 (D.S.C. 1973).

39. Blacks in Edgefield County have a much lower socio-economic status than do whites. Blacks as a group have smaller incomes, less education and fewer employment opportunities.

CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to 28 U.S.C. 1331 (a), 1331(3) and (4) and 2201. Also pursuant to Rule 23 of the Federal Rules of Civil Procedure the Court has the power to consider an act upon application for establishing a class action.

2. The Court finds that the necessary requirements of Rule 23 have been met for the maintenance of the class action since the class is so numerous that the joinder of all members is impractical, there are questions of law and fact common to the class, claims or defenses of the representative parties are typical of the claims or defenses of the class and representative parties will fairly and adequately protect the interest of the class. The class is composed of all black citizens who are residents of Edgefield County, South Carolina.

3. This action is brought for declaratory and injunctive relief alleging deprivation under color of law, statute, ordinance, regulation, custom or usage of certain rights and privileges secured to the plaintiffs by the Constitution and laws of the United States and such suits is authorized by 42 U.S.C. §1983. The plaintiffs claim constitutional deprivation of rights secured by the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

4. Since the plaintiffs have made a constitutional attack on the form of government now in use in Edgefield County, South Carolina and the method of electing the members of County Council and the residential requirements of these members, the plaintiffs have the burden of proof and must establish their claim by the greater weight or preponderance of the evidence

in establishing that the political processes leading to the nomination and election of candidates to County Council are not equally open to participation by blacks and that members of the class have less opportunity than do white residents of the county to participate in the political process and to elect representatives of their choice. White v. Regester, 402 U.S. 755 (1973). White also holds that it is not enough that plaintiff show that a racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. It must prove that the election process is not equally open to participation by the minority group. This is being proved in the present case.

5. The Supreme Court in White v. Regester, identified several factors indicative of denial of access to political process. Among these are:

a. A history of official racial discrimination which touched the right of the minority to register and vote and participate in the democratic process;

b. An historical pattern of a disproportionately low number of the groups' members being elected to the legislative body.

c. A lack of responsiveness on the part of elected officials to the needs of a minority community;

d. A depressed socio-economic status which makes participation in community processes difficult;

e. Election rules or party rules requiring majority vote as a prerequisite to nomination.

Other indicia were added by the Fifth Circuit in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973). These include:

a. Poll taxes

b. Literacy test

c. Property ownership requirements for running for office

d. Disproportionate education, employment, income levels and living conditions;

e. Bloc voting - polarized voting by race

f. Segregation principles adopted by political parties;

g. Requirement for majority vote to be elected;

h. Prohibition against single-shot voting;

i. Systematic exclusion from juries, and

j. Levy of taxes to maintain a dual school system.

While many of these restrictions have been removed i.e. single-shot voting now allowed, no poll tax, no literacy test,

unified school system, jury selection open to all registered voters, there is still a long history of racial discrimination in all areas of life, There is bloc voting by the whites on a scale that this Court has never before observed and all advances made by the blacks have been under some type of court order.

Participation in the election process does not mean simply the elimination of legal, formal or official barriers to black participation. The standard is whether the election system as it operates in Edgefield County tends to make it more difficult for blacks to participate with full effectiveness in the election process and to have their votes fully effective and equal to those of whites. Black voters have no right to elect any particular candidate or number of candidates, but the law requires that black voters and black

candidates have a fair chance of being successful in elections, and the record in this case definitely supports the proposition and finding that they do not have this chance in Edgefield County.

If black candidates lose in the normal give-and-take of the political arena, then the courts may not interfere. And under no theory of the law can a court direct a white to vote for a black or a black to vote for a white. However, if there is proof, and there is ample proof in this case, that the black candidates tend to lose not on their merits but solely because of their race, then the courts can only find that the black voting strength has been diluted under the system and declare the same unconstitutional.

Black participation in Edgefield County has been merely tokenism, and even this has been on a very small scale.

Black workers at the polling places are appointed by the white controlled democratic party and blacks have been poorly represented even in predominately black precincts as the above findings of fact reflect.

There can be no other explanation for the amazing votes reflected in Findings of Fact 28-30 except that whites absolutely refust to vote for a black.

The County Council has not been responsive to the needs of black citizens, even though they make up a majority of the population of the county. The small number of blacks employed by the county, their pay scale, the small number of blacks appointed to various county committees and the nature, duties and responsibilities of these committees are stark proof of official neglect and unconcern on the part of the Edgefield County Council. There are 120 positions on various

boards and commissions appointed by the present County Council. Of these 25 are held by blacks, with 9 of the positions being on the now non-existent human relations committee and 6 of the remaining 16 being on the senior citizens council. Of the 19 different boards and commissions blacks serve on only 9.

No black has been elected to County Council, the state legislature or any countywide office. The black serving on the school board obviously serves as a token and at the pleasure of the white power structure.

Normally the majority vote requirement and run-off elections to insure a majority do not dilute black voting strength, but in combination with all the other evidences of discrimination, bloc voting and disregard for needs of black citizens the majority vote requirement, run-off elections

and even staggered terms of the members of council tend to dilute the voting strength of the blacks.

The present at-large voting plan is aggravated by the fact that there is only one party politics in Edgefield County, because there is no competition between parties and no need for the existing party to seek black support.

All these factors when coupled with the strong history and tradition of official segregation and discrimination draws the Court to the inevitable conclusion that the rights of the blacks to due process and equal protection of the laws in connection with their voting rights have been and continue to be constitutionally infringed and the present system must be changed.

IT IS, THEREFORE, ORDERED that judgement be entered in favor of the plaintiffs and that the defendants are hereby enjoined

from holding any further elections for Edgefield County Council until a new and constitutional method of electing members to County Council has been adopted pursuant to applicable state law.

IT IS FURTHER ORDERED that the Court shall maintain jurisdiction of this case during the interim and while the plan is being adopted in accordance with the provisions hereof.

AND IT IS SO ORDERED.

/S/
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

April 17, 1980

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ET AL.,	]	
	]	
Plaintiffs,	]	
	]	CIVIL ACTION
v.	]	NO. 74-281
	]	
CHARLES E. LYBRAND, ET AL.,	]	
	]	
Defendants.	]	

MOTION FOR LEAVE TO FILE ATTACHED SUPPLEMENTAL COMPLAINT

Plaintiffs by counsel move the Court for the entry of an order pursuant to Rule 15(d), F.R. Civ.P., permitting them to file a supplemental complaint, a copy of which is attached hereto as Exhibit A, setting forth certain events that have occurred since the filing of the original complaint.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS

/S/
ARMAND DERFNER
P.O. Box 608
Charleston, SC
29402
[Certificate of Service Omitted in Printing]

/S/
LAUGHLIN McDONALD
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie Street, NW
Atlanta, GA 30303
404-523-2721

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ET AL.,	]
	]
Plaintiffs,	]
	]CIVIL ACTION
v.	]NO. 74-281
	]
CHARLES E. LYBRAND, ET AL.,]	
	]
Defendants.	]

SUPPLEMENTAL COMPLAINT

Plaintiffs, with leave of Court, file this supplement to their Complaint and make the following additional allegations:

1. This suit is authorized by 42 U.S.C. §1973c (Section 5 of the Voting Rights Act of 1965). A court of three judges constituted in accordance with the provisions of 28 U.S.C. §2284 is required by 42 U.S.C. §1973c for determination of Plaintiffs' cause of action involving Defendants' failure to comply with §1973c.

2. The Edgefield County Council is a political subdivision to which the prohibitions of the Voting Rights Act of 1965, 42 U.S.C. §1973b(a), are in effect pursuant to the certification of the Attorney General of the United States under 42 U.S.C. §1973b(b).

3. The Defendants have the authority and duty to submit pursuant to 42 U.S.C. §1973c, §5 of the Act, "any voting qualification or prerequisite to voting, or standard, practice, or procedure different from that in force or effect on November 1, 1964" to the Attorney General of the United States, or to institute an action on behalf of Edgefield in the United States District Court for the District of Columbia for a declaratory judgment that any such qualification or prerequisite to voting, or standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

4. On April 21, 1980, the County Council adopted a resolution to established single-member districts for election of the Council.

5. The Defendants, upon information and belief, in July, 1980, rescinded or repudiated the April 21, 1980 resolution, and intend to hold all future elections for the Edgefield County Council at-large rather than from single-member districts pursuant to the April resolution.

6. The July, 1980 action of the Defendants constitutes a "standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964" within the meaning of §5, and is ineffective as law until pre-cleared.

7. The Defendants have failed to pre-clear the July, 1980 action pursuant to §5 in violation of the rights of Plaintiffs.

Third Cause of Action

8. The actions of Defendants in preparing to hold elections for the County Council at-large in violation of §5 deprives Plaintiffs of rights secured by the First, Thirteenth, due process and equal protection clauses of the Fourteenth and the Fifteenth Amendments of the Constitution of the United States and 42 U.S.C. §§1971 (a)(1), 1973, 1973c and 1983.

WHEREFORE, Plaintiffs respectfully pray that:

(a) This Court cause to be convened a district court of three judges to hear Plaintiffs' third cause of action as required by 28 U.S.C. §2284 and 42 U.S.C. §1973c;

(b) The court of three judges declare the rights of the parties and enjoin the holding of elections for the Edgefield

County Council at-large;

(c) The Court as a single judge court do the following:

[1] Issue a preliminary injunction to be made permanent later enjoining the Defendants from holding at-large elections under the present apportionment of the Edgefield County Council;

[2] Issue a declaratory judgment that the actions of the Defendants in maintaining the present districting for the County Council is violative of the rights of Plaintiffs secured by the First, Thirteenth, privileges and immunities, equal protection, and due process clauses of the Fourteenth and Fifteenth Amendments of the Constitution of the United States and 42 U.S.C. §§1971(a)(1), 1973, and 1973c and 1983;

[3] Order the County Council to reapportion itself utilizing voting districts in a manner that complies with

the one person-one vote mandate of the Supreme Court of the United States and which does not have the effect or purpose of diluting the voting strength of black citizens;

[4] Submit such reapportionment plan to the Attorney General of the United States as required by 42 U.S.C. §1973c;

[5] Order that all members of the County Council be elected at a special election to be held in Edgefield County as soon as practicable;

(d) This Court grant Plaintiffs their costs and reasonable attorneys' fees, and issue such further relief as may be just and proper; and

(e) Retain jurisdiction of this cause.

/S/
ARMAND DERFNER
P.O. Box 608
Charleston, SC
29402

ATTORNEYS FOR
PLAINTIFFS

/S/
LAUGHLIN McDONALD
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie Street, NW
Atlanta, Georgia 30303
[404] 523-2721

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

Thomas C. McCain, et al., Plaintiff, vs Charles E. Lybrand, et al, Defendant.	Civil Action No. 74-281 O R D E R

This matter is before the Court as a result of a motion filed by defendant pursuant to Rules 59(e) and 60(b) asking the Court to alter, amend, or vacate its Order and Judgment entered April 17, 1980, and April 22, 1980, respectively. This Court's Order of April 17 invalidated and declared unconstitutional the method by which members of the Edgefield County Council are elected and the judgment enjoined the defendants from holding any elections pursuant to the present plan.

The present motion to alter, amend

or vacate is made upon the authority of a decision of the United States Supreme Court issued April 22, 1980, City of Mobile, Alabama v. Bolden, et al ____U. S. ____, No. 77-1844, decided April 22, 1980. The Mobile case decided that an action by the State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by discriminatory purpose. The Court went on to hold that to prove such discriminatory purpose it is not enough to show that a minority group has not elected representatives in proportion to its number, but must prove that the disputed plan was "conceived or operated as a purposeful device to further racial discrimination."

In this Court's Order of April 17, 1980 it relied heavily upon the standard set forth by the Fifth Circuit in Zimmer v. McKeithen, 485 F.2d 1297. In Mobile the Court referring to Zimmer stated:

> That case, coming before Washington v. Davis, 426 U.S. 229, was quite evidently decided upon the misunderstanding that it is not necessary to show a discriminatory purpose in order to prove a violation of the Equal Protection Clause - that proof of a discriminatory effect was sufficient.

The Mobile court pointed out that there had been a finding in the Mobile case that no Negro had ever been elected to City Commission because of the pervasiveness of racially polarized voting, and the trial court further found that city officials had not been as responsive to the interest of Negroes as to whites and concluded that the political processes in Mobile were not equally open to blacks, even though they registered and voted without an appearance [sic]. The Court further found that a proof of an "aggregate" of the Zimmer factors does not prove discriminatory intent or unconstitutional discriminatory purpose.

As to past discrimination the Court stated:

> But past discrimination cannot, in the manner of originial sin, condemn governmental action that is not itself unlawful. The ultimate question remains whether a discriminatory intent has been proved in a given case.

As to the at-large electoral system and the majority vote requirement, the Court stated:

> But those features of that electoral system, such as the majority vote requirement, tend naturally to disadvantage any voting minority, as we noted in White v. Regester, supra. They are far from proof that the at-large electoral scheme represents purposeful discrimination against Negro voters.

A careful reading of Mobile and a reconsideration of the evidence in the present Edgefield County case convinced the Court that the plaintiffs have not proved that the voting plan for election of members of County Council in Edgefield County

was either conceived or is operated as a purposeful device to further racial discrimination nor was it intended to invidiously discriminate against blacks in violation of the Equal Protection Clause. Therefore, the Court's Order entered April 17, 1980 and the judgment entered thereon entered April 22, 1980 must be vacated. Since circumstances have changed since the evidence was originally taken in this case the parties may wish to submit additional evidence on the point that is now the crux of the case-whether the at-large system was conceived or operated as a purposeful device to further racial discrimination.

The Court will allow additional evidence to be submitted on this point and schedules the matter for a further hearing and the taking of any necessary testimony on Thursday, September 4, 1980 at 10:00 a.m. in the Federal Courthouse in Columbia,

South Carolina.

AND IT IS SO ORDERED.

S/
ROBERT F. CHAPMAN
United States District
Judge

August 8th, 1980

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ET AL.,	]
	]
Plaintiffs,	]
	]
v.	]CIVIL ACTION
	]NO. 74-281
CHARLES E. LYBRAND, ET AL.,	]
	]
Defendants.	]

SECOND SUPPLEMENTAL COMPLAINT

Plaintiffs, with leave of Court, file this supplement to their Complaint and make the following additional allegations:

1. This suit is authorized by 42 U.S.C. §1973c (Section 5 of the Voting Rights Act of 1965). A court of three judges constituted in accordance with the provisions of 28 U.S.C. §2284 is required by 42 U.S.C. §1973c for determination of Plaintiffs' cause of action involving Defendants' failure to comply with §1973c.

2. The Edgefield County Council is a political subdivision to which the prohibitions of the Voting Rights Act of 1965, 42 U.S.C. §1973b(a), are in effect pursuant to the certification of the Attorney General of the United States under 42 U,S.C. §1973b(b)

3. The Defendants have the authority and duty to submit pursuant to 42 U.S.C. §1973c, §5 of the Act, "any voting qualification or prerequisite to voting, or standard, practice, or procedure different from that in force or effect on November 1, 1964" to the Attorney General of the United States, or to institute an action on behalf of Edgefield County in the United States District Court for the District of Columbia for a declaratory judgment that any such qualification or prerequisite to voting, or standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging

the right to vote on account of race or color.

4. Home rule legislation was adopted in South Carolina in 1972, amending Article VIII of the South Carolina Constitution. As amended Article VIII provides in Section 7 that the General Assembly "shall provide by general law for the structure, organization, powers, duties, functions and the responsibilities of counties * * *. Alternative forms of government, not to exceed five, shall be established."

5. Pursuant to Article VIII of the South Carolina Constitution, the General Assembly of South Carolina enacted Sections 14-3701 et seq. of the South Carolina Code of Laws, 1962, recodified as Sections 4-9-10 et seq. of the Code of Laws of South Carolina, 1976, providing for five alternative forms of elected county government. The General Assembly therein provided that "[e]ach county * * * may prior to July 1, 1976,

conduct a referendum to determine the wishes of the qualified voters as to the form of government to be selected * * *." In the event no referendum was held, the legislation further provided that "the county concerned shall, beginning on that date [July 1, 1976], have the form of government, including the method of election, number, composition and terms of the governing body more nearly corresponding to the form in effect in the county immediately prior to that date." §4-9-10(b), Code of Laws of South Carolina, 1976.

6. No referendum was ever conducted in Edgefield County under the Home Rule Act.

7. On March 29, 1976, the Plaintiffs filed a motion to enjoin the upcoming 1976 elections for the County Council, which was denied by the Court on April 14, 1976.

8. On June 21, 1976, the Edgefield County Council adopted by resolution and ordinance the Council Administrator form of government, whereby the council consists of 5 members elected from residential districts by the voters of the county at-large.

9. In spite of the fact that the 1976 resolution and ordinance was a change in voting required to be pre-cleared under the Voting Rights Act of 1965, no pre-clearance was sought by the County Council prior to September, 1978, with the result that elections in both 1976 and 1978 were held in violation of 42 U.S.C. §1973c.

10. Edgefield's implementation of home rule was finally submitted to the Attorney General pursuant to §5 of the Voting Rights Act of 1965 and was received on October 3, 1978.

11. On November 3, 1978, the Attorney General requested additional information

and the submission was completed on December 10, 1978.

12. On February 8, 1979, within 60 days of completion of the submission, the Attorney General interposed his objection "to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County." A copy of the objection letter is attached hereto as Exhibit A.

13. On April 9, 1979, the County Council voted to submit a plan utilizing single member districts to the Department of Justice and to appoint a Citizens Advisory Committee to assist in establishing the council districts.

14. The Citizens Advisory Committee was duly appointed, and after consultation with Bobby Bowers, Chief, Office of Demographic Statistics, South Carolina

Division of Research and Statistical Services, recommended to the County Council the adoption of a specific plan providing for the election of council member from single-member districts, some of which districts contained a majority of black residents.

15. Notwithstanding the objection of the Attorney General and the recommendation of the Citizens Advisory Committee, Defendants made preparations to hold the 1980 elections for the County Council at-large.

16. Plaintiffs moved in April, 1980, over the Defendants' objections, to enjoin the 1980 at-large elections, while on April 17, 1980, this Court entered an order finding the at-large elections to be unconstitutional and enjoined further elections until a new and constitutional method of electing the County Council was adopted pursuant to applicable state law.

17. On April 21, 1980, the County

Council again adopted a resolution to establish single-member districts for election of the Council.

18. On April 25, 1980, however, the Defendants moved this Court to alter, amend or vacate judgment on the basis of the intervening decision of City of Mobile v. Bolden, ____U.S.____, 100 S.Ct.1490 (1980).

19. On August 8, 1980, the Court granted Defendants' motion and withdrew its April 17, 1980 order, but allowed the submission of additional evidence whether the at-large system in Edgefield was conceived or operated as a purposeful device to further racial discrimination.

20. The Defendants have rescinded or repudiated their various resolutions to adopt single member districts for election of the Edgefield County Council, and notwithstanding the outstanding objection of the Department of Justice, intend to hold all future council elections at-large.

21. The decision to adopt at-large voting constitutes a "standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964" within the meaning of §5, and is ineffective as law until pre-cleared.

22. The Defendants have failed to pre-clear the adoption of at-large voting pursuant to §5 in violation of the rights of Plaintiffs.

23. At-large elections were conceived and are being maintained in Edgefield County as a purposeful device to further racial discrimination.

Third Cause of Action

24. The actions of Defendants in preparing to hold elections for the County Council at-large without having obtained pre-clearance and in spite of the outstanding objection of the Department of Justice

violates §5 and deprives Plaintiffs of rights secured by the First, Thirteenth, due process and equal protection clauses of the Fourteenth and Fifteenth Amendments of the Constitution of the United States and 42 U.S.C. §§1971(a)(1), 1973, 1973c and 1983.

WHEREFORE, Plaintiffs respectfully pray that:

(a) This Court cause to be convened a district court of three judges to hear Plaintiffs' third cause of action as required by 28 U.S.C. §2284 and 42 U.S.C. §1973c;

(b) The Court of three judges declare the rights of the parties and enjoin the holding of elections for the Edgefield County Council at-large;

(c) The Court as a single judge court do the following:

[1] Issue a preliminary injunction to be made permanent later enjoining the Defendants from holding at-large elections for the Edgefield County Council;

[2] Issue a declaratory judgment that the actions of the Defendants in maintaining at-large elections for the County Council is violative of the rights of Plaintiffs secured by the First, Thirteenth, privileges and immunities, equal protection and due process clauses of the Fourteenth and Fifteenth Amendments of the Constitution of the United States and 42 U.S.C. §§1971 (a)(1), 1973, and 1973c and 1983;

[3] Order the County Council to reapportion itself utilizing voting districts in a manner that complies with the one person-one vote mandate of the Supreme Court of the United States and which does not have the effect or purpose of diulting the voting strength of black citizens;

[4] Submit such reapportionment plan to the Attorney General of the United States as required by 42 U.S.C. §1973c;

[5] Order that all members of the County Council be elected at a special election to be held in Edgefield County as soon as practicable;

(d) This Court grant Plaintiffs their costs and reasonable attorneys' fees, and issue such further relief as may be just and proper; and

(e) Retain jurisdiction of this cause.

/S/
LAUGHLIN McDONALD
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie Street, NW
Atlanta, Georgia 30303
404-523-2721

[Certificate of Service Omitted in Printing]

/S/
ARMAND DERFNER
P.O. Box 608
Charleston, SC 29402

ATTORNEYS FOR PLAINTIFFS

[Exhibit A Appears in the Juris. S.A. at 29a]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

FILED Nov 24 1980

Thomas C. McCain, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 74-281
vs.	)	
	)	
Charles E. Lybrand, et al.,	)	O R D E R
	)	
Defendants.	)	

This matter is before the Court upon motion of the plaintiff to be allowed to file a second supplemental complaint. The Court has carefully reviewed the memorandum in support and the memorandum in opposition of the motion and concludes that the amendment should be allowed in order that this litigation may be determined once and for all on all issues that exist up to this point in time. This will avoid the necessity of filing additional complaints and should promote the orderly and fair administration

of justice in this proceedings.

IT IS, THEREFORE, ORDERED that the Clerk shall file the second supplemental complaint and the defendant shall have the usual time to answer.

AND IT IS SO ORDERED.

/S/
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

November 24th 1980

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

Thomas C. McCain, et al., Plaintiffs, vs. Charles E. Lybrand, et al., Defendants.	CIVIL ACTION NO. 74-281 ANSWER TO SECOND SUPPLEMENTAL COMPLAINT

In answer to the second supplemental complaint, the defendants would show this Court:

1. That any allegation of the second supplemental complaint not hereinafter expressly admitted, qualified or explained is denied;

2. That the allegations of paragraph 1 are denied;

3. That the allegations of paragraph 2 are admitted;

4. That the existence of the statute

to which reference is made in paragraph 3 is admitted; however, reference to that statute is craved for a proper statement of its contents;

5. That the allegation of paragraph 4 that home rule legislation was adopted in South Carolina in 1972 is denied and that as to the remaining allegations of paragraph 4, reference is craved to the provisions of Article VIII of the South Carolina Constitution for a proper statement of their contents;

6. That the existence of the statutes to which reference is made in paragraph 5 is admitted; however, reference to those statutes is craved for a proper statement of their contents;

7. That the allegations of paragraphs 6,7 and 8 are admitted;

8. That the allegations of paragraph 9 are denied;

9. That only so much of paragraph 10 as in effect alleges that the June 21, 1976 resolution of the Edgefield County Council was submitted to the United States Attorney General is admitted and that the remaining allegations of paragraph 10 are denied;

10. That the allegations of paragraph 11 are admitted;

11. That the existence of the letter to which reference is made in paragraph 12 is admitted; however, reference to that letter is craved for a proper statement of its content;

12. That the occurrence of the April 9, 1979 Edgefield County Council meeting to which reference is made in paragraph 13 is admitted; however, reference to the minutes of that meeting is craved for a proper statement of the actions taken by the Edgefield County Council members at that time;

13. That the allegations of paragraph 14 are admitted with the qualification that the plan recommended by the Citizens Advisory Committee included two single-member districts which contained a majority of black residents;

14. That only so much of paragraph 15 as in effect alleges that the defendants planned to hold the 1980 election for the Edgefield County Council members utilizing the method of election prescribed by Act No. 1104 of 1966, as amended by Act No. 521 of 1971, is admitted and that the remaining allegations of paragraph 15 are denied;

15. That only so much of paragraph 16 as in effect alleges that the plaintiffs moved in April, 1980, to enjoin the 1980 election for Edgefield County Council members, which motion the defendants opposed, is admitted and that as to the remaining allegations of paragraph 16, reference is craved to the April 17, 1980, order of this Court

for a proper statement of its contents;

16. That the allegations of paragraph 17 are denied;

17. That the existence of the pleading and the order to which reference is made in paragraphs 18 and 19 respectively is admitted; however, reference to that pleading and that order is craved for a proper statement of their respective contents; and

18. That the allegations of paragraphs 20, 21, 22, 23 and 24 are denied.

WHEREFORE, having answered the second supplemental complaint, the defendants demand that it be dismissed with costs to the plaintiffs.

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.
Deputy Attorney General

KAREN LeCRAFT HENDERSON
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211

CHARLES W. COLEMAN
Attorney at Law

Post Office Box 77
Edgefield, SC 29824

By: /S/
ATTORNEYS for the
defendants

December 4, 1980

Columbia, South Carolina

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

THOMAS C. McCAIN, ET AL., Plaintiffs,	]
v.	]CIVIL ACTION]NO. 74-281
CHARLES E. LYBRAND, ET AL., Defendants.	]

MOTION FOR LEAVE TO AMEND AND SUPPLEMENT SECOND SUPPLEMENTAL COMPLAINT

Plaintiffs by counsel move the Court for the entry of an order pursuant to Rule 15, F.R.Civ.P., permitting them to amend and supplement the Second Amended Complaint by adding to it the following:

1. On and prior to November 1, 1964, the government of Edgefield County consisted of an elected county supervisor and two commissioners appointed by the Governor upon the recommendation of the members of the General Assembly from the county, or a

majority of them. The supervisor had general jurisdiction over roads, bridges, ferries, and paupers, in all matters relating to taxes and disbursements of public funds for county purposes and in other matters necessary for the internal improvements and local concerns of the county. Neither the supervisor nor the other commissioners, however, had power to tax, to incur bonded indebtedness, to prescribe procedures for budgeting and accounting; to appoint or recommend the appointment of members to county boards, commissions and agencies, or to exercise eminent domain. These governmental powers were retained and exercised by the members of the General assembly from Edgefield County.

2. On June 1, 1966, Act No. 1104 of 1966 was enacted creating the Edgefield County Council. The Act provided for a council of three members elected for terms of two years, with one member with the

largest plurality elected from the county at-large from each of three specified districts of the county. The Act further empowered the council to legislate in reference to matters of local concern including exercising the powers of eminent domain, making appropriations and levying taxes, incurring indebtedness, issuing bonds and ordering the levying and collection of ad valorem taxes, prescribing methods of accounting for county offices and departments, and supervising and regulating the various departments of the county.

3. Act No. 1104 of 1966 was a voting qualification or prerequisite to voting, or standard, practice or procedure different from that in force or effect on November 1, 1964, required to be pre-cleared pursuant to 42 U.S.C. §1973c, prior to being implemented. No pre-clearance was sought, however, with

the result that the 1966 change was implemented in violation of §5 of the Voting Rights Act of 1965.

4. Act No. 1104 of 1966 was amended on June 25, 1971 to increase the membership of the council to five persons, one member with the largest plurality being elected by the county at-large from each of five specified districts. Act No. 521 of 1971.

5. Act No. 521 of 1971 was submitted to the Attorney General pursuant to §5 and no objection to the change involving an increase in the size of the council was interposed.

6. Act No. 1104 of 1966 was amended again on May 24, 1974 to provide for the recommendation or appointment of boards or commissions or officials of Edgefield County to be vested in the council.

7. Act No. 1042 of 1974 (H. 3096) is a voting qualification, or prerequisite to

voting, or standard, practice or procedure different from that in force or effect on November 1, 1964, but upon information and belief, was never pre-cleared under §5.

8. On December 9, 1980, the Attorney General of the United States notified the office of the Attorney General of South Carolina that Act No. 1104 of 1966 was never submitted either to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by §5. The State was requested within ten (10) days to inform the Department of Justice what action the State of South Carolina plans to take with respect to pre-clearance of Act No. 1104 of 1966. A copy of the letter of the Attorney General of the United States is attached hereto as Exhibit B.

/S/
LAUGHLIN McDONALD
NEIL BRADLEY
CHRISTOPHER COATES
52 Fairlie Street, N.W.
Suite 355
Atlanta, GA 30303
[404] -523-2721

/S/
ARMAND DERFNER
P.O. Box 608
Charleston, S.C. 39402

ATTORNEYS FOR PLAINTIFFS

[Certificate of Service Omitted in Printing]

U.S. Department of Justice

DSD:GWJ:DHH:ca
DJ 166-012-3
D5564

Washington, DC 20530

DEC 9, 1980

Ms. Treva Ashworth
Senior Assistant Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear Ms. Ashworth:

This is in reference to the status under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of the governing body of Edgefield County, South Carolina.

Act 1104 of 1966 (R1357, H2559) established the governing body of Edgefield County, defined the powers of that body, and established the method of its election. A thorough investigation of our files and records has led us to con-

clude that this act was never submitted either to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5.

If our information is correct, it is necessary that this Act either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it has neither the purpose nor the effect of denying or abridging the vote on account of race or color.

Should you elect to submit this Act to the Attorney General, please follow the procedures set forth in the Procedures for the Administration of Section 5 (28 C.F.R. Part 51).

To enable this Department to meet its responsibility to enforce the Voting

Rights Act, please inform us within ten days of your receipt of this letter what action the State of South Carolina plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David H. Hunter, [202] 724-7189. Please refer to File No. D5564 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

DREW S. DAYS III
Assistant Attorney
General
Civil Rights Division

By:
GERALD W. JONES
Chief, Voting Section

cc: Karen LeCraft Henderson, esq.
Charles W. Coleman, esq.
Laughlin McDonald, esq.
Armand Derfner, esq.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

FILED JAN 6 1981

Thomas C. McCain, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
vs.	)	NO. 74-281
	)	
Charles E. Lybrand, et al.,	)	
	)	
Defendants.	)	O R D E R

This matter is before the Court upon motion of the plaintiffs to amend and supplement the second supplemental complaint to allege the failure of the defendants to pre-clear Act No. 1104 of 1966 in violation of §5 of the Voting Rights Act of 1965. The defendants oppose this motion contending that Act No. 1104 of 1966 is no longer in effect, since it was superseded by an Act in 1971, and the 1971 enactment was submitted to the United States Department of Justice and the United States

Attorney General who opposed no objections to its provisions.

In keeping with its prior announced intent to decide all present issues involving the County Council of Edgefield County and to avoid the need for additional causes of action, the Court will allow the complaint to be amended as requested.

AND IT IS SO ORDERED.

/S/
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

January 6th, 1981
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

Thomas C. McCain, et al., Plaintiffs, vs. Charles E. Lybrand, et al, Defendants.	CIVIL ACTION NO. 74-281 ANSWER TO AMENDMENT AND SUPPLEMENT TO SECOND AMENDED COMPLAINT

In answer to the plaintiffs' amendment and supplement to their second amended complaint, the defendants would show this Court:

1. That any allegation of the amendment and supplement to the second amended complaint not hereinafter expressly admitted, qualified or explained is denied;

2. That as to the allegations of paragraph 1, reference is craved to Title 14 of the 1962 Code of Laws of South

Carolina for an accurate statement of applicable State law governing the operation of Edgefield County government on and before November 1, 1964;

3. That only so much of paragraph 2 as alleges that Act No. 1104 of 1966 was enacted by the South Carolina General Assembly on June 1, 1966, is admitted and that as to the remaining allegations of paragraph 2, reference to that statute is craved for an accurate statement of its provisions;

4. That the allegations of paragraph 3 are admitted;

5. That only so much of paragraph 4 as alleges that Act No. 1104 of 1966 was amended on June 25, 1971, is admitted and that as to the remaining allegations of paragraph 4, reference to Act No. 521 of 1971 is craved for an accurate statement of its provisions;

6. That as to the allegations of paragraph 5, reference to the letter of the United States Attorney General dated November 24, 1971, relating to Act No. 521 of 1971, a copy of which is attached hereto, made a part hereof and designated Exhibit A, is craved for an accurate statement of its contents;

7. That only so much of paragraph 6 as alleges that Act No. 1104 of 1966 was amended on May 24, 1974, is admitted and that as to the remaining allegations of paragraph 6, reference to Act No. 1042 of 1974 is craved for an accurate statement of its provisions;

8. That the allegations of paragraph 7 are denied; and

9. That as to the allegations of paragraph 8, reference to the December 19, 1980, letter of the United States Attorney General to the South Carolina Attorney General is

craved for an accurate statement of its content.

WHEREFORE, having answered the amendment and supplement to the second amended complaint the defendants demand that it be dismissed with costs to the plaintiffs.

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.
Deputy Attorney General

KAREN LeCRAFT HENDERSON
Senior Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina
29211

CHARLES W. COLEMAN
Attorney at Law

Post Office Box 70
Edgefield, South Carolina
29824

By: /S/
ATTORNEYS for the Defendants

January 16, 1981

Columbia, South Carolina

[Certificate of Service Omitted in Printing]

DEPARTMENT OF JUSTICE
WASHINGTON

NOV 24, 1971

Mr. James H. Quackenbush, Jr.
Assistant Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

Dear Mr. Quackenbush:

This is in reference to your letter of September 24, 1971, concerning the submission of H2206 to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

The Attorney General does not interpose any objections to the change in question. However, we feel a responsibility to pount out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judi-

cial action to enjoin the enforcement of such changes.

Sincerely,

s/
DAVID L. NORMAN
Assistant Attorney
General
Civil Rights Division

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

Thomas C. McCain, et al.,	)	ORIGINAL FILED
	)	MARCH 10 1981
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION
	)	NO. 74-281
Charles E. Lvbrand, et al.,	)	
	)	O R D E R
Defendants.	)	

This matter is before the Court upon motion of the plaintiffs to compel discovery. Plaintiffs contend that defendants have not answered plaintiffs' second set of interrogatories and have not produced certain documents requested. The Court has read the interrogatories which relate to whether or not Act No. 1104 of 1966 was ever submitted by the defendants or any Edgefield County official or any other person to the United States Department of

Justice, or to the United States District Court for the District of Columbia pursuant to §5 of the Voting Rights Act of 1965.

The answer to this interrogatory states that there are no records discovered to date which indicate any submission of Act No. 1104 of 1966. The Court finds this to be a sufficient answer and directs the defendants to update this answer and produce any documents if subsequently it is determined that some type of submission was in fact made.

AND IT IS SO ORDERED.

/S/
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

March 10th , 1981

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

Thomas C. McCain, et al.,	
Plaintiffs,	
vs.	CIVIL ACTION NO. 74-281
Charles E. Lybrand, et al.,	
Defendants.	STIPULATIONS

The parties by counsel stipulate to the following facts:

1. The plaintiffs are black citizens of Edgefield County, South Carolina.

2. The defendants include the five members of the Edgefield County Council and the three members of the Edgefield County Board of Election Commissioners.

3. On and prior to November 1, 1964, Edgefield County was governed by a board of county commissioners, consisting of an

elected county supervisor and two commissioners appointed by the Governor upon the recommendation of the Edgefield County legislative delegation. The duties, powers and functions of the Edgefield County Board of Commissioners were prescribed by Sections 14-201 through 14-210 and 14-251 through 14-258 of the 1962 Code of Laws of South Carolina, as amended, copies of which are attached hereto, made a part hereof and designated Exhibit A.

4. On June 1, 1966, the South Carolina General Assembly enacted Act. No. 1104 creating the Edgefield County Council. The Council consisted of three members elected for terms of two years, with one member with the largest plurality elected from the county at large from each of three designated residency districts, as prescribed by Act No. 1104, a copy of which is attached hereto, made a part hereof and designated Exhibit B.

5. Act No. 1104 of 1966 was a voting qualification or prerequisite to voting, or standard, practice or procedure different from that in force or effect in Edgefield County on November 1, 1964, but there are no records discovered to date which indicate that Act No. 1104 was either submitted to the United States Department of Justice for pre-clearance or judicially reviewed by the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965.

6. Act No. 1104 of 1966 was amended on June 25, 1971, by Act No. 521, a copy of which is attached hereto, made a part hereof and designated Exhibit C.

7. Act No. 521 of 1971 was submitted to the United States Attorney General pursuant to Section 5 on or about September 24, 1971, and on or about November 24, 1971,

the United States Attorney General advised the Office of the South Carolina Attorney General by letter that he interposed no objection to its provisions, a copy of which letter is attached hereto, made a part hereof and designated Exhibit D.

8. Act No. 1104 of 1966 was also amended in 1967 (Act No. 55), in 1968 (Act No. 1318) and in 1974 (Act No. 1042). Those acts did not alter the method of election of the Edgefield County Council and they were not submitted to the United States Department of Justice for pre-clearance or to the United States District Court for the District of Columbia for judicial review. Copies of those acts are attached hereto, made a part hereof and designated Exhibit E.

9. The original complaint herein was filed on February 26, 1974. The plaintiffs contended that: (1) the method of electing

the Edgefield County Council at large diluted black voting strength in violation of the First, Thirteenth, Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1971, 1973 and 1983; and (2) the residency districts were malapportioned on the basis of population.

10. On May 16, 1974, the District Court granted summary judgment for the plaintiffs on their malapportionment claim. McCain v. Lybrand, 376 F. Supp. 304 (D.S.C. 1974). The Fourth Circuit Court of Appeals, however, reversed sub nom. Lytle v. Commissioners of Election, 509 F.2d 1049 at 1054 (4th Cir. 1974) ("there is not ... wide disparity in population among the districts") and the United States Supreme Court subsequently denied a petition for a writ of certiorari. McCain v. Lybrand, 419 U.S. 1032 (1974).

11. In the meantime, pursuant to Article VIII of the South Carolina Constitution, the General Assembly of South

Carolina enacted Sections 14-3701 et seq. of the 1962 South Carolina Code of Laws, as amended [recodified as Sections 4-9-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended], known as the Home Rule Act, providing for five alternative forms of elected county government. The General Assembly provided inter alia that "[e]ach county ... may prior to July 1, 1976, conduct a referendum to determine the wishes of the qualified voters as to the form of government to be selected...." §4-9-10(a). In the event no referendum was held, the legislation further provided that "the county concerned shall, beginning on that date [July 1, 1976], have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date" [§4-9-10(b)], which, in the case of Edgefield County

the General Assembly determined to be the council-administrator form.

12. Edgefield County did not conduct a referendum on the question of the form of government (including method of election) prior to July 1, 1976, because no proper petition was timely filed as held in McCain v. Edwards, 272 S.C. 539, 252 S.E.2d 924 (1979)

13. On March 29, 1976, the plaintiffs filed a motion herein to enjoin the upcoming 1976 election for the Edgefield County Council, which motion was denied on April 14, 1976.

14. On June 21, 1976, the Edgefield County Council adopted by resolution and ordinance the council-administrator form of county government, copies of which resolution and ordinance are attached hereto, made a part hereof and designated Exhibit F.

15. The June 21, 1976, resolution and ordinance were not submitted to the United States Department of Justice for pre-clearance

nor were they judicially reviewed by the United States District Court for the District of Columbia.

16. On August 3, 1978, the United States Department of Justice wrote to Edgefield County requesting that the 1976 ordinance be pre-cleared. The Department wrote again on September 20, 1978, renewing its request and, by letter dated September 29, 1978, Edgefield County's implementation of home rule was submitted to the United States Attorney General, who received it on October 3, 1979.

17. On November 3, 1978, the United States Attorney General requested additional information and the submission was completed on December 10, 1978.

18. On February 8, 1979, the United States Attorney General by letter interposed

an objection to Edgefield County's submission, a copy of which letter is attached hereto, made a part hereof and designated Exhibit G.

19. On April 9, 1979, the Edgefield County Council held a meeting and took certain action, which action is reflected in the minutes taken at that meeting, a copy of which minutes is attached hereto, made a part hereof and designated Exhibit H.

20. During May, 1977, the Edgefield County Council received recommendations from the Citizens Advisory Committee which it had earlier appointed to assist in proposing single member election districts for the Edgefield County Council, a copy of which recommendations is attached hereto,made a part hereof and designated Exhibit I.

21. The plaintiffs moved in April, 1980, to enjoin the 1980 at-large elections, while on April 17, 1980, the Court entered an order (a copy of which is attached hereto, made a

part hereof and designated Exhibit J) that the at-large method of election constitutionally infringed upon "the rights of the blacks to due process and equal protection of the laws in connection with their voting rights." Slip opinion at 20. Further elections were enjoined until a new and constitutional method of electing the Edgefield County Council was adopted pursuant to applicable State law.

22. On April 21, 1980, the Edgefield County Council held a meeting and took certain action, which action is reflected in the minutes taken at that meeting, a copy of which minutes is attached hereto, made a part hereof and designated Exhibit K.

23. On April 25, 1980, the defendants moved the Court to alter, amend or vacate judgment on the basis of the intervening decision of City of Mobile v. Bolden, ____ U.S. _____, 100 S.Ct. 1490 (1980). Their

motion was granted on August 11, 1980, with leave to introduce additional evidence "whether the at-large system was conceived or operated as a purposeful device to further racial discrimination." A copy of the Court's order is attached hereto, made a part hereof and designated Exhibit L.

24. In the meantime, the plaintiffs moved to amend their complaint to require the pre-clearance of Act No. 1104 of 1966 and to enjoin implementation of the objected to 1976 resolution and ordinance. Allowance to amend was granted in two orders, one entered on November 24, 1980, and the other on January 6, 1981.

25. The Edgefield County Council is a political subdivision to which the prohibitions of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(a), are in effect pursuant to the certification of the Attorney General of the United States under 42 U.S.C. §1973b(b)

26. Beginning with the 1972 general election to date, the five members of the Edgefield County Council have been elected at-large from the residency districts designated in Act No. 521 of 1971.

27. As applied to the Edgefield County Council, the provisions of the Home Rule Act as construed by the South Carolina Supreme Court [Infinger vs. Edwards,268 S.C. 375, 234 S.E.2d 214 (1977)] continued as the method of election "most nearly corresponding to [that] in effect in the county immediately prior to [July 1, 1976]" [§4-9-10(b), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended] the method of election (at-large with residency districts) prescribed by Act No. 521 of 19

28. The parties by counsel stipulate to the genuineness of the documents heretofore attached hereto, made a part hereof and designated as Exhibits A through L. In addition, they stipulate to the genuineness of

the following documents, copies of which are attached:

M. Letter to Charles W. Coleman from Drew S. Days, III, dated November 3, 1978;

N. Letter to Treva Ashworth from Drew S. Days, III, dated December 9, 1980;

O. Letter to Gerald W. Jones from Treva G. Ashworth, dated December 16,1980;

P. Letter to Charles W. Coleman from James P. Turner, dated December 31, 1980;

Q. Letter to T.C. McCain from H.O. Carter, dated April 12, 1979; and

R. Edgefield County Council Meeting, October 2, 1979, minutes.

Stipulated and agreed to this 30th day of June, 1981.

/S/
LAUGHLIN McDONALD
ATTORNEY for Plaintiffs

/S/
KAREN LeCRAFT HENDERSON
ATTORNEY for Defendants

CHAPTER 5.

COUNTY BOARDS OF COMMISSIONERS

Sec.

14-201. How composed.

14-202. Bond of commissioners.

14-203. Board may elect a clerk.

14-204. Assistant clerk in Richland County.

14-205. Commissioners not to be interested in contracts with counties.

14-206. Boards may administer oaths and punish for contempt.

14-207. Annual meeting; notice to file claims.

14-208. Comptroller to prescribe forms and systems of bookkeeping.

14-209. Annual report to presiding judge.

14-210. Annual report to Comptroller General.

§14-201. HOW COMPOSED. - Except as otherwise provided in this Title, there shall

be in each of the counties of this State a county board of commissioners which shall be composed of the county supervisor who shall be elected and hold office as provided by law, and two commissioners, who shall be appointed by the Governor upon the recommendation of the members of the General Assembly from the several counties, or a majority of them, and whose term of office shall be coterminous with that of the supervisor with whom they are appointed to serve and until their successors shall be appointed and qualified. The said commissioners shall be commissioned by the Secretary of State as other county officers, but without charge for their commissions.

[annotations omitted in printing]

EXHIBIT A

§14-202. BOND OF COMMISSIONERS. - The county commissioners, except as otherwise provided in this Title, shall each give bond in the sum of one thousand dollars. [annotations omitted in printing]

§14-203. BOARD MAY ELECT A CLERK. - The board in each of the counties of the State may elect a clerk who shall perform the duties of secretary and be paid an annual salary as provided by law and whose term of office shall be coterminous with that of the members of the board electing him. [annotations omitted in printing]

§14-204. ASSISTANT CLERK IN RICHLAND COUNTY. - The governing body of Richland County may appoint a suitable person as assistant to the secretary or clerk so that, in case of death, absence or removal of the secretary-clerk, the assistant to the secretary or clerk may

draw the orders on the county treasurer as herein provided.
[annotations omitted in printing]

§14-205. COMMISSIONERS NOT TO BE INTERESTED IN CONTRACTS WITH COUNTIES. - No member of a board of county commissioners shall be directly or indirectly interested in a[illegible] contract pertaining to his duty as commissioner.
[annotations omitted in printing]

§14-206. BOARDS MAY ADMINISTER OATHS AND PUNISH FOR CONTEMPT. - The members of the county board of commissioners may administer oaths to all persons appearing before them and punish by fine not exceeding ten dollars or imprisonment in the county jail not exceeding twenty hours any and all persons guilty of disorderly conduct amounting to an open or direct contempt or wilful interruption of their proceedings.
[annotations omitted in printing]

§14-207. ANNUAL MEETING: NOTICE TO FILE CLAIMS. - The annual meeting of the county board of commissioners of each county shall be on the first Thursday after the first Monday of January, and the clerk of the board shall give notice of the time of holding such annual meeting by inserting the same at least once a week for four weeks previous to such meeting in any newspaper published in the county, and if there be no newspaper published in the county by posting such notice on the courthouse door. The notice shall require all persons holding demands of any kind against the county, not previously presented to the board, to file the same with the clerk on or before the first day of January so that they may be examined and ordered to be paid at the annual meeting. All persons holding such accounts or claims, not paid, shall deposit them with

the clerk of the board as required in the notice.

[annotations omitted in printing]

§14-208. COMPTROLLER TO PRESCRIBE FORMS AND SYSTEMS OF BOOKKEEPING. - The county commissioners shall keep an account of claims audited and allowed by them against the several funds appropriated for county purposes in accordance with a form to be prescribed by the Comptroller General, and they shall conform to any system of bookkeeping that may be prescribed for use in their office by the Comptroller General.

[annotations omitted in printing]

§14-209. ANNUAL REPORT TO PRESIDING JUDGE. - The county board of commissioners shall submit to the presiding judge on the first day of the first term of the court of general sessions in each year, to be by him

submitted to the grand jury of the county with an itemized statement of all amounts ordered to be paid by them for the preceding fiscal year, a report of the condition of the highways and bridges and the poor farm and other matters concerning the welfare of the county.
[annotations omitted in printing]

§14-210. ANNUAL REPORT TO COMPTROLLER GENERAL. - The commissioners of each county shall on or before the fifth day of January in each year report to the Comptroller General a detailed account of all their doings in such form as the Comptroller General shall direct or prepare and forward to them for such purpose. Such reports shall be incorporated in the annual report of the Comptroller General and laid before the General Assembly.
[annotations omitted in printing]

CHAPTER 6.

COUNTY SUPERVISORS.

Sec.

14-251. Election and term.

14-252. Bond.

14-253. Approval of bond.

14-254. General jurisdiction; administering oaths.

14-255. Seal of supervisor.

14-256. Record; expense thereof; inspection.

14-257. Salaries paid quarterly.

14-258. Suits for defaults by supervisor.

§14-251. ELECTION AND TERM. - Except as otherwise provided in this Title there shall be in each of the counties of this State a county supervisor who shall be elected by the qualified electors of the respective counties and whose term of office except as otherwise provided, shall be for four years and until his successor shall

have been elected and qualified.
[annotations omitted in printing]

§14-252. BOND. - The county supervisor so elected shall, before entering upon the duties of his office, execute a bond for the use of the county, with three or more sufficient sureties, for the faithful performance of his duties, which, except as otherwise provided, shall be in the penal sum of five thousand dollars.
[annotations omitted in printing]

§14-253. APPROVAL OF BOND. - Such bond shall be approved in the same manner as bonds of county auditors and county treasurers.
[annotations omitted in printing]

§14-254. GENERAL JURISDICTION; ADMINISTERING OATHS. - The county supervisor shall have general jurisdiction in his county (a) over all public highways,

roads, bridges and ferries, (b) over paupers, (c) in all matters relating to taxes and disbursements of public funds for county purposes and (d) in any other case that may be necessary for the internal improvement and local concerns of his county. He may administer oaths to any person in reference to matters appertaining to his office.

[annotations omitted in printing]

§14-255. SEAL OF SUPERVISOR. - The County supervisor shall procure and adopt a seal and, when so adopted, shall cause a description thereof, with an impression therefrom, to be filed in the office of the clerk of court and of the sheriff, treasurer, and Secretary of State, and the same shall thereupon be the seal of the supervisor, and all orders or other papers signed by such supervisor shall be authenticated by the official seal.

[annotations omitted in printing]

§14-256. RECORD; EXPENSE THEREOF; INSPEC- - The county supervisor shall cause a record to be kept of all the proceedings of the board of which he is herein made chairman, as well as a record of all contracts entered into with such boards, as provided in this Title. Such records shall be open to public inspection. All necessary books and materials for keeping the same shall be paid for out of the funds herein provided for the respective boards in the same manner as other charges are paid.
[annotations omitted in printing]

§14-257. SALARIES PAID QUARTERLY. - The salaries of the supervisors in the several counties shall be paid quarterly by the county treasurer out of the county funds in the same manner as other claims against the county are paid.
[annotations omitted in printing]

§14-258. SUITS FOR DEFAULTS BY SUPERVISOR. - In case of the failure of the county supervisor to perform faithfully the duties of his office or the conditions of his bond the solicitor of the circuit in which such supervisor shall reside shall bring an action upon the bond of the supervisor in the name of the county. Any amount realized from such suit shall be deposited in the treasury to the credit of the road fund. The solicitor shall receive therefor such fees as the court shall designate. [annotations omitted in printing]

(R1357, H2559)

NO. 1104

An Act To Divide Edgefield County Into Districts For Certain Purposes And To Provide A System Of County Government For Edgefield County.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Edgefield County divided into three districts. - For the purposes of elections as provided herein and such other elections and purposes as may be provided by law, Edgefield County is divided into three districts as follows:

District No. 1 shall be composed of Johnston No. 1, Johnston No. 2, Long Branch,

Central and Bacon precincts.

District No. 2 shall be composed of Trenton, Merriwether, Colliers, Cleveland and Red Hill precincts.

District 3 shall be composed of Edgefield No. 1, Edgefield No. 2, Kendall, Moss, Rock Hill, Pleasant Lane and Meeting Street precincts.

SECTION 2. System of government for Edgefield County. - There is hereby created for Edgefield County a system of county government as set forth in this act.

SECTION 3. County council created - members - elections - vacancies - county administrator. - There is hereby created the Edgefield County Council (council) which shall be composed of three members who shall be elected at the same time as the general election in November of 1966 and at each general election thereafter to serve for

terms of two years or until their successors are elected and qualify. One member with the largest plurality shall be elected from the county at large from each of the three districts of the county. Any qualified elector in the district may qualify as a candidate for member of the council from that district by filing with the Clerk of Court of Edgefield County on or before twelve o'clock noon, August 15, 1966. Thereafter, candidates shall file and be nominated as candidates are for other county offices. Vacancies on the council shall be filled by appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council shall employ a county administrator who shall be the administrative officer for the county at such a salary and term as

is determined by the council. The council shall require such bond of the county administrator as it deems ad- / visable. /2768 The council shall not elect one of its members as county administrator. Meetings of the council shall be held whenever necessary but not less than twice monthly. Members of the council shall receive a monthly salary of one hundred twenty-five dollars. A chairman shall be elected annually at the first meeting of the council and shall receive an additional salary of twenty-five dollars per month. The Edgefield County supervisor and the county commissioners shall continue to exercise their duties only as to county roads and bridges and under the supervision of the council until the expiration of their terms, at which time the offices of county commissioner and county supervisor for the county shall be abolished.

SECTION 4. Recommendations. - Any appointments in Edgefield County, to be made by the Governor upon the recommendation of the Senator, shall henceforth be made upon the recommendation of a majority of the council, with the approval of the membership of the House of Representatives from Edgefield County; and any such appointments now made upon the recommendation of a majority of the Edgefield County Legislative Delegation shall henceforth be made upon the recommendation of a majority of the council, with the consent of the membership of the House of Representatives from Edgefield County.

SECTION 5. Ordinances. - No ordinance of the council which levies a tax, or appropriates money, or incurs bonded indebtedness shall be valid unless the provision shall have been read at three regular meetings of the council and shall be published in

both newspapers of general circulation in the county at least twenty days before the final reading. All proceedings of the council shall be recorded, and annually all ordinances and resolutions passed during the preceding twelve months shall be printed and made available for distribution through the office of the council upon payment of a charge set by the council.

SECTION 6. Powers and duties. - In addition to the foregoing and other statutory duties and powers, the council is hereby empowered to legislate in reference to such matters of local concern with Edgefield County as herein provided and shall have the following powers:

1. To adopt, use and alter a corporate seal.

2. (a) To acquire by purchase or gift real property in the name of Edgefield County. /

/2769

(b) To lease, sell or otherwise dispose of real and personal property in the name of Edgefield County, including all such property now owned by the county.

(c) To acquire tangible personal property and supplies.

3. To make contracts and execute all instruments necessary or convenient for carrying out the functions committed to it.

4. To exercise the powers of eminent domain in the manner provided by the general laws of the State of South Carolina for procedure by any county, municipality, or authority organized under the laws of this State, or by the South Carolina State Highway Department, or by railroad corporations, or in any manner provided by laws, as the board may, in its discretion, elect.

5. To make appropriations and to levy taxes therefor for corporate purposes and for educational purposes, to build and

repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, county officers, and for litigation, quarantine and court expenses and for ordinary county purposes, to support paupers, and to pay past indebtedness.

6. To provide for the receipt, custody, allocation and disbursement of funds accruing to Edgefield County.

7. To provide within the county special services which are considered necessary to public health and welfare.

8. To incur indebtedness in anticipation of the collection of taxes which have been levied.

9. To issue bonds pledging the faith and credit of Edgefield County for the purposes authorized by and within the limits prescribed by the Constitution of the State of South Carolina, including educational purposes, to build and repair public roads,

buildings and bridges, to maintain and support prisoners, pay jurors, county officers, and for litigation, quarantine and court expenses and for ordinary county purposes, to support paupers, and pay past indebtedness. Bonds issued pursuant to this section shall mature serially in such manner as the council may provide. They may contain provisions permitting their redemption prior to their stated maturity at premium figures. The council shall also be empowered to determine the rates of interest the bonds may bear, the method of their execution and sale and all other matters incident to the proper issuance and delivery of the bonds. It shall be empowered to order the levy and collection of ad valorem taxes upon all taxable property in Edgefield County without limitation as to rate or amount sufficient to provide for the payment of the principal and inter-

est on these bonds. /

/2770

10. To enter into agreements on matters of local concern with agencies and instrumentalities of the Federal Government, the State Government, political subdivisions of the State, and educational, charitable, and eleemosynary institutions.

11. To regulate, control and provide for the construction, maintenance, operation and use of public streets, roads, bridges, sidewalks, drains, courthouses, jails, buildings, prison farms, and other public improvements and facilities.

12. To prescribe methods of accounting for county officers and departments.

13. To supervise and regulate the various departments of the county, except that the duties and functions now provided by law for the offices of the sheriff, clerk of the court, probate judge, coroner, and superintendent of education shall not

be altered.

14. To create such agencies and departments as may be deemed advisable, and to prescribe their duties and functions; and to alter or transfer the duties and functions of existing offices, agencies or departments.

15. To employ all county employees whose election by the people is not provided for by law and to establish policies affecting the selection, appointment, compensation, dismissal and other matters in the control of the administrative employees of the county government.

SECTION 7. Reports and budgets.--Every county official, department, commission, institution or board receiving grants or appropriations from county, State and/or Federal funds shall, on or before October first of each year, make a full and detailed report of its financial status, activi-

ties and expenditures for the past fiscal year, showing all balances in all accounts controlled by such official, department, commission, institution or board, together with its budget and recommendations for the coming year, to the board. These reports and budgets shall be filed with the council on or before October first of each year. The council shall, from the reports, prepare a budget for the operation of the county for the ensuing year which must receive a majority of the votes of the members of the board before becoming effective. The council shall cause the county budget to be published in both newspapers having general circulation in the county such budget shall show in detail the amount of the proposed appropriations, the purposes for which they / are to be made, /2771 and the millage to be levied. The publi-

cation shall be published as soon as practicable after adoption.

SECTION 8. Not to affect other bond issues.--No budget promulgated by the council shall become effective or be published until approved by the membership of the House of Representatives from Edgefield County.

SECTION 10. Time effective.--This act shall take effect upon approval by the Governor.

Approved the 1st day of June, 1966.

OF SOUTH CAROLINA

GENERAL AND PERMANENT LAWS--1971

(R722, H2206)

NO. 521

An Act To Amend Act 1104 of 1966, As Amended, Relating To A System Of County Government For Edgefield County, So As To Increase The Number Of Districts And The Number Of County Council Members.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Edgfield County divided into districts.--Section 1 of Act 1104 of 1966 is amended by striking it out and inserting:

"Section 1. For the purposes of elections as provided herein and such other elections and purposes as may be provided by law, Edgfield County is divided into five districts as follows:

EXHIBIT C

District No. 1 shall be composed of Johnston No. 1, Johnston No. 2 and Long Branch precincts.

District No. 2 shall be composed of Trenton, Central and Bacon precincts.

District No. 3 shall be composed of Edgefield No. 1 and Edgefield No. 2 precincts.

District No. 4 shall be composed of Merriwether, Colliers, Cleveland and Kendall precincts.

District No. 5 shall be composed of Red Hill, Rock Hill, Moss, Meeting Street and Pleasant Lane precincts." /

/990

SECTION 2. Edgefield County Council.-- Section 3 of Act 1104 of 1966, as amended, is further amended by striking it out and inserting:

"Section 3. There is hereby created the Edgefield County Council (council) which shall be composed of five members

who shall be elected in each general election to serve for terms of two years until their successors are elected and qualify. One member with the largest plurality shall be elected by the county at large from each of the five districts of the county. Candidates shall file and be nominated as candidates are for other county offices. Vacancies on the council shall be filled by appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council may employ a county administrator who shall be the administrative officer for the county at such a salary and term as is determined by the council. The council shall require such bond of the county administrator as it deems advisable. The council shall not elect one of its members as county administra-

tor. Meetings of the council shall be held whenever necessary but not less than twice monthly. Members of the council shall receive a monthly salary of twenty-five dollars per month. The Edgefield County supervisor and the county commissioners shall continue to exercise their duties only as to county roads and bridges and under the supervision of the council until the expiration of their terms, at which time the offices of county commissioner and county supervisor for the county shall be abolished."

SECTION 3. Time effective.--This act shall take effect upon approval by the Governor.

Approved the 25th day of June, 1971.

[Exhibit D appears supra, at 125]

(R81, H1247)

NO. 55

An Act To Amend Act No. 1104, Acts And Joint Resolutions Of South Carolina, 1966, Relating To The Edgefield County Government, So As To Make It Permissible For The County Council To Employ A County Administrator.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 3 of Act 1104 of 1966 amended--county council created--members--elections--vacancies--county administrator. --Section 3 of Act No. 1104, Acts and Joint Resolutions of South Carolina, 1966, is amended by striking the word "shall" on line fifteen and inserting in lieu thereof the word "may" so that when amended the

section shall read as follows:

"Section 3. There is hereby created the Edgefield County Council (council) which shall be composed of three members who shall be / elected at the same time /5
as the general election in November of 1966 and at each general election thereafter to serve for terms of two years or until their successors are elected and qualify. One member with the largest plurality shall be elected from the county at large from each of the three districts of the county. Any qualified elector in the district may qualify as a candidate for member of the council from that district by filing with the Clerk of Court of Edgefield County on or before twelve o'clock noon, August 15, 1966. Thereafter, candidates shall file and be nominated as candidates are for other county offices. Vacancies on the council shall be filled by appointment by

the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council may employ a county administrator who shall be the administrative officer for the county at such a salary and term as is determined by the council. The council shall require such bond of the county administrator as it deems advisable. The council shall not elect one of its members as county administrator. Meetings of the council shall be held whenever necessary but not less than twice monthly. Members of the council shall receive a monthly salary of one hundred twenty-five dollars. A chairman shall be elected annually at the first meeting of the council and shall receive an additional salary of twenty-five dollars per month. The Edgefield County supervisor and the county commissioners

shall continue to exercise their duties only as to county roads and bridges and under the supervision of the council until the expiration of their terms, at which time the offices of county commissioner and county supervisor for the county shall be abolished."

SECTION 2. Time effective.--This act shall take effect upon approval by the Governor.

Approved the 23rd day of February, 1967.

(R1542, H1331)

NO. 1318

An Act To Amend Act No. 1104 Of 1966, As Amended, Relating To The Edgefield County Council, So As To Provide That The Records Of The Council Show The Action Taken And The Vote Of Each Member Of The Council On All Resolutions, Ordinances And Other Matters.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Passage of ordinances.--Section 5 of Act No. 1104 of 1966 is amended on line six by inserting "and shall include the official action taken by the council and the vote of each member on all resolutions, ordinances and other matters," after

"recorded,". The section when amended shall read as follows:

"Section 5. No ordinance of the council which levies a tax, or appropriates money, or incurs bonded indebtedness shall be valid unless the provision shall have been read at three regular meetings of the council and shall be published in both newspapers of general circulation in the county at least twenty days before the final reading. All proceedings of the council shall be recorded, and shall include the official action taken by the council and the vote of each member on all resolutions, ordinances and other matters, and annually all ordinances and resolutions passed during the preceding twelve months shall be printed and made available for distribution through the office of the council upon payment of a charge set by the council."

SECTION 2. Time effective.--This act shall take effect upon approval by the Governor.

Approved the 14th day of June, 1968.

(R1171, H3096)

NO. 1042

An Act To Amend Act No. 1104 Of 1966, As Amended, Relating To The Edgefield County Council, So As To Further Provide for Compensation Of The Members, Recommendations And Appointments; To Provide For Certain Duties Concern- / ing The County /222 Farm To Market Program; And To Delete A Provision Concerning The Approval Of Budgets.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Edgefield County Council.-- Section 3 of Act No. 1104 of 1966, as last amended by Act No. 521 of 1971, is further amended by striking the last three sentences and inserting in lieu thereof

the following: "A chairman shall be elected annually at the first meeting of the council. Members of the council shall receive monthly salaries as may be determined by the council, but such salaries shall not exceed two hundred dollars except for the chairman who may receive not exceeding two hundred fifty dollars." The section when amended shall read as follows:

"Section 3. There is hereby created the Edgefield County Council (council) which shall be composed of five members who shall be elected in each general election to serve for terms of two years and until their successors are elected and qualify. One member with the largest plurality shall be elected by the county at large from each of the five districts of the county. Candidates shall file and be nominated as candidates are for other county offices. Vacancies on the council

shall be filled by appointment by the Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council may employ a county administrator who shall be the administrative officer for the county at such a salary and term as is determined by the council. The council shall require such bond of the county administrator as it deems advisable. The council shall not elect one of its members as county administrator. Meetings of the council shall be held whenever necessary but not less than twice monthly. A chairman shall be elected annually at the first meeting of the council. Members of the council shall receive monthly salaries as may be determined by the council, but such salaries shall not exceed two hundred dollars except for the chairman who may receive not

exceeding two hundred fifty dollars."

SECTION 2. Appointments.--Section 4 of Act No. 1104 of 1966 is amended to read as follows:

"Section 4. The council shall perform all functions relating to the recommendation or appointment of boards or commissions or officials of Edgefield County as were formerly vested in the county / /2226 legislative delegation or in the county legislative delegation, including the senator, or in the senator, or any other words of similar import as provided by law."

SECTION 3. Additional powers.--Section 6 of Act No. 1104 of 1966, relating to the powers and duties of the Edgefield County Council, is amended by adding item 16 which shall read as follows:

"16. To make such recommendations as may be required concerning the farm to market program."

SECTION 4. Repeal.--Section 9 of Act No. 1104 of 1966 is repealed.

SECTION 5. Time effective.--This act shall take effect November 15, 1974.

Approved the 24th day of May, 1974.

ORDINANCE PROVIDING FOR THE COMPOSITION AND ELECTION OF A NEW COUNTY COUNCIL FOR EDGEFIELD COUNTY PURSUANT TO CODE SECTIONS 14-3701 and 14-3706.

WHEREAS, Sections 14-3701 and 14-3706 of the Code of Laws of South Carolina provides a mechanism to establish the composition and method of elections; and

WHEREAS, Section 3 of Act 283 of 1975 requires county governing bodies to provide by ordinance for the composition and election of a new county council; and

WHEREAS, the County of Edgefield has by Resolution, dated June 21, 1976, adopted the form of government in accordance with Title 14 of the Code of Laws of South Carolina.

NOW, THEREFORE, BE IT ENACTED:

That the County Council of Edgefield County shall consist of five (5) members; one (1) member with the largest plurality from the county at large from

each of the five districts of the County, which are as follows:

District 1 shall be composed of Johnston No.1, Johnston No.2, and Long Branch Precincts; District 2 shall be composed of Trenton, Central and Bacon Precincts; District 3 shall be composed of Edgefield No.1 and Edgefield No.2 Precincts; District 4 shall be composed of Merriweather, Colliers, Cleveland and Kendall Precincts; District 5 shall be composed of Red Hill, Rock Hill, Moss, Meeting Street and Pleasant Lane Precincts.

BE IT FURTHER ENACTED that in the general election scheduled for the 2nd day of November, 1976, that the qualified voters will select the members of said council; provided that those members currently serving on the governing body of Edgefield County will continue to serve the terms for which they were duly elected.

ADOPTED THIS 19th DAY OF July, 1976.

/S/

Chairman of County Council

Introduced June 21, 1976

2nd Reading July 13, 1976

Final Reading July 19, 1976

ATTEST:

/S/

Clerk of County Council

EXHIBIT F

RESOLUTION ADOPTING THE COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR THE COUNTY OF EDGEFIELD PURSUANT TO TITLE 14, SECTION 3701 (b) OF THE CODE OF LAWS OF SOUTH CAROLINA.

WHEREAS, Section 14-3701 (b) of the Code of Laws provides that unless otherwise determined by referendum prior to July 1, 1976, the County shall beginning on that date have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the County immediately prior to that date; and

WHEREAS, the General Assembly has determined in Section 14-3701 (b) of the Code of Laws that Edgefield County was operating under the Council Administrator Form immediately prior to the date of July 1, 1976; and

WHEREAS, the governing body of Edgefield County consisted of five (5)

members, elected at large with residentiary districts for two year terms; and

WHEREAS, there has not been a referendum held in Edgefield County to determine a form prior to July 1, 1976.

NOW, THEREFORE, BE IT RESOLVED in accordance with Section 14-3701 (b) that Edgefield County hereby adopts the Council Administrator Form of Government.

BE IT FURTHER RESOLVED that the County Council shall be composed of five (5) members to be elected at large from each district for a two year terms.

ADOPTED THIS 21st DAY OF JUNE, 1976.

_____
Chairman of County Council

Introduced 6-21-76
Final Action 6-21-76

ATTEST:

_____
Clerk of County Council

[EXHIBIT G appears in the Juris. S. A. at 29a.]

EDGEFIELD COUNTY COUNCIL MEETING
APRIL 9, 1979

* * * *

The "Public Hearing" in reference to the objection interposed by the U.S. Department of Justice as to the method of electing council members in Edgefield County was held Wednesday, April 4, 1979 with approximately 150 citizens attending.

It was obvious that of those voicing opinions, at this meeting, were in favor of the singel member district method of election and also desired citizen representation in this effort to establish new districts for single member method of election.

A motion was made by Councilman Herlong and seconded by Councilman Huiet to pursue the implementation of single member districts for electing council members for Edgefield County. Also, to

request the Chairman of the Democratic Party and the Chairman of the Republican Party to appoint one representative from each precinct in Edgefield County to serve on an advisory committee. Mr. Bobby Bowers, S.C. Division of Research and Statistical Services, to be requested to assist us in establishing the new council districts. Motion carried.

* * * *

EXHIBIT H

TUESDAY
MAY 1, 1979

On Tuesday, May 1, 1979, at 7:00 p.m., the first meeting of the Edgefield County Citizen Advisory Committee was held in the Edgefield County Court House.

A list of those in attendance is attached.

Mr. Charles E. Lybrand, Chairman of the Edgefield County Council, presided and called on Rev. Revels for the invocation.

Chairman Lybrand then called on the county administrator to state the purpose of the meeting.

After stating the purpose of the meeting, the county administrator advised those in attendance that Mr. Bobby Bowers, Chief, Office of Demographic Statistics, South Carolina Division of Research and Statistical Services, has been asked to serve as ex-officio and chairman of the

advisory committee.

Mr. Bowers then further elaborated on the objection imposed by the U.S. Department of Justice and the alternatives available to the County.

Mr. Bowers stated that to stay with the five member council it would be necessary to average 3, 138 citizens per district with not more than a 10% variance.

Mr. Bowers then presented two plans for establishing council districts for single members districts. They are as follows:

Plan No. 5A:

District No. 1 includes enumeration district 13, 14, and 15 for a population of 3,053, has a 2.7% variance with 48.05% black.

District No. 2 includes entire City of Edgefield and enumeration district no. 3 for a population of 3,156 with a variance of +.57% variance and 48.2% black.

EXHIBIT I

District No. 3 - Trenton with a population of 3,288 for a variance of + 4.78% and 64.2% black.

District No. 4 - Enumeration district 8, 9a & b for a population of 3,083 with a minus 1.75% variance and 36.07% black.

District No. 5 - Enumeration districts 1, 2, & 7 for a population of 3,112 with a variance of minus .083% and 60.8% black.

Total average variance for Plan No. 5A is 7.70%.

Plan No. 5B:

District No. 1 - Same as District No. 1 in Plan 5A.

District No. 2 - Enumeration district 3, 5, 6, & 7 for a population of 3,056 with a minus 3.61% variance and 45.3% black.

District No. 3 - Same as District No. 3 in Plan 5A.

District No. 4 - Same as District No. 4 in Plan 5A.

District No. 5 - Enumeration District No. 4, 1 & 2 for a population of 3,212 with a variation of minus 2.63% and 63.3% black.

Total variance for Plan 5B is 7.70%.

A member of the committee then asked Mr. Bowers what the procedure would be from this point.

Mr. Bowers responded that the committee should approve a plan and then recommend another public hearing. The plan would then be recommended to those present at the public hearing and to the County Council. The plan would then be recommended to the legislative delegation who would recommend same to the general assembly and pending their approval would be forwarded to the United States Justice Department for consideration.

A motion was made by G. W. Flurette and seconded by T. C. McCain to recommend Plan A as presented to those present at the next public hearing and to the County Council. Motion carried.

There being no further business, the meeting was adjourned.

[Letterhead omitted in printing]

MAY 3, 1979

Mr. Charles E. Lybrand, Chairman
Edgefield County Council
P.O. Box 663
Edgefield, SC 29824

Dear Mr. Lybrand:

At the request of the Edgefield Legislative Delegation, I met with the Delegation and County Council at a public meeting on Wednesday, April 4, 1979. The purpose of this meeting was to explain to the council and the citizens of Edgefield County their options in addressing the objection interposed by the U.S. Justice Department under the Voting Rights Act to Edgefield County as outlined in their letter of February 8, 1979. At this meeting, I was requested to work with a biracial committee appointed by the chairman of the Democratic and Republican

parties with each having the option to appoint twelve members.

On Tuesday, May 1, 1979 at 7:00 p.m., I met with this committee at the Edgefield County Courthouse with all five members of county council and the County administrator present. I was asked to serve as ex-officio chairman since I was representing the interests of the legislative delegation. My report is as follows:

In addition to the above listed persons, the following committee members or their representative were present:

Rev. J. G. Revels, Jr.
Nathaniel Jackson
Lib Dixon (for Hugh Clark)
W. M. Gregory
Jesse Williams
J. J. Bowman
T. C. McCain
T. K. Davis (for Preston Miller)
Donald Turner
Mrs. George Rucker
Farris C. Parker
Richard A. Beals
R. J. Floyd, Sr.
Thomas H. Ryan
Ms. Marianne Luckey
G. W. Flurett

I presented an extensive explanation of the Justice Department letter in relation to the present situation and a presentation of the data and maps available to accomplish single member districts. After this presentation and the answering of the questions raised, I presented two five-member single member district plans for the purpose of injecting a point of discussion. I then asked for input and questions from the committee and they proceeded to narrow down to the two plans submitted. I am enclosing a copy of each plan and the census narrative for each plan.

It was after this discussion that Mr. G. W. Flurett moved that the committee recommend to the Edgefield County Council that the county council call a second public meeting for the purpose of explaining both plans and the committees recommenda-

tions to the citizens of the county, and that the committee go on record as recommending plan 5A as presented. This motion was seconded by Mr. T. C. McCain. After the question was called for by Rev. J. G. Revels, Jr., the motion carried unanimously. The committee also requested that I be present at the next meeting to explain the committees recommendations to the public with the same type of presentation.

Please express my thinks to the members of the committee for their interest and efforts in trying to get a solution to this particular problem. If I can be of further assistance to you, please feel free to call on me.

Sincerely,

s/
BOBBY M. BOWERS
Chief Demographic
Statistics

BMB:mll

Enclosure

cc: The Honorable William Reel, Jr.
The Honorable William E. Knotts, Jr.
The Honorable Gilbert E. McMillan
The Honorable Nikki G. Setzler
The Honorable Tom Turnipseed

EXHIBIT I

Edgefield County - Plan 5A
Single-Member Districts

	ED	Total Population	% Variation	Black Population	% Black
District #1	13	1,369		252	
	14	1,133		964	
	15	501		251	
		3,053	-2.71%	1,467	48.05%
District #2	2	406		277	
	4	1,071		589	
	5	1,154		639	
	6	525		17	
		3,156	+0.57%	1,522	48.22%
District #3	10	362		133	
	11	179		126	
	12	884		693	
	13	905		571	
	16	958		587	
	17	3,288	+4.78%	2,110	64.17%
District #4	8	361		85	
	9A&B	2,722		1,027	
		3,083	-1.75%	1,112	36.07%
District #5	1	1,295		1,001	
	2	846		442	
	7	971		450	
		3,112	-0.83%	1,893	60.83%

Total Variation 7.70%

Division of Research & Statistical Service

Edgefield County - Plan 5B
Single-Member Districts

	ED	Total Population	% Variation	Black Population	% Black
District #1	13	1,369		252	
	14	1,183		964	
	15	501		251	
		3,053	-2.71%	1,467	48.05%
District #2	3	406		277	
	5	1,154		639	
	6	525		17	
	7	971		450	
		3,056	-2.61	1,383	45.25%
District #3	10	352		133	
	11	179		126	
	12	884		693	
	16	905		571	
	17	958		587	
		3,288	+4.78%	2,110	64.17%
District #4	8	361		85	
	9A&B	2,722		1,027	
		3,083	-1.75	1,112	36.07%
District #5	1	1,295		1,001	
	2	846		442	
	4	1,071		589	
		3,212	+2.36	2,032	63.26%

Total Variation 7.70%

Division of Research & Statistical Service

[EXHIBIT J appears, supra, at 30.]

EDGEFIELD COUNTY COUNCIL MEETING

APRIL 21, 1980

* * * *

County Attorney Charles W. Coleman advised the Council that on April 17, 1980 United States District Judge Robert F. Chapman gave the following order in the Civil Action No. 74-281 Thomas C. McCain and others v. Charles E. Lybrand and others: "IT IS, THEREFORE, ORDERED that judgment be entered in favor of the plaintiff and that the defendants are hereby enjoined from holding any further elections for Edgefield County Council until a new and constitutional method of electing members to County Council has been adopted pursuant to applicable state law."

"IT IS FURTHER ORDERED that the Court shall maintain jurisdiction of this

case during the interim and while the plan is being adopted in accordance with the provisions hereof."

After a considerable amount of discussion, it was the recommendation of the County Attorney and Councilman Herlong that the County Attorney schedule an appointment with Judge Chapman and advise him of the plans recommended to Council by the Citizens Advisory Group and request that he allow us to continue with the same method of election until 1982 at which time the single members district plan will be put into effect utilizing the 1980 census data.

Another alternative would be to appeal the decision of the court to the Fourth Circuit Court of Appeals in Richmond, Virginia.

Section 4-9-10 of the 1976 Code of Laws allows for the County Council to

request the General Assembly to pass a form of government for Edgefield County and/or the legislature can submit the question of form of government in a referendum. Either way, Edgefield County would then have single member districts.

Regardless of the direction taken at this time, Judge Chapman would have to approve the plan.

It was pointed out that the Attorney General's Office probably would not lend any assistance should Council decide to appeal the case. County Attorney Charles W. Coleman stated that a considerable amount of research would have to be carried out and that a research firm could do this for much less than County Attorney Coleman.

A motion was made by Councilman Herlong and seconded by Councilman Williams to have the county attorney schedule a meeting with Judge Chapman and discuss

with him the plan of action that has been recommended to the Edgefield County Council by the Citizens Advisory Committee to establish single member districts and request the Judge to allow us to put the plan into effect for the 1982 elections utilizing the 1980 census data in order that we will not have to redistrict twice. Also, to hold a special election for the council members will be expensive. Motion carried.

EXHIBIT K

* * * *

[Exhibit L appears, <u>supra</u>, at 84.]

DSD:DHH:ED:gml
DJ 166-012-3
A7852

NOV 3, 1978

Mr. Charles W. Coleman
Coleman and Herlong
Attorneys at Law
Post Office Box 77
Edgefield, South Carolina 29824

Dear Mr. Coleman:

This is in reference to the implementation of the South Carolina Home Rule Act by Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 5, 1978.

After a preliminary examination of the initial submission, this Department has determined that the information sent is insufficient to enable to the Attorney General to determine that the proposed change does not have the purpose and will

not have the effect of abridging the right to vote on account of race.

In order to aid us in evaluatin the submission we would appreciate your providing us with the following information:

1. An explanation of the additional powers and duties that devolve to the Edgefield County Council as a result of home rule implementation. It is our opinion that changes in the functioning of the council constitute a basis for evaluating the form of government and method of election ordained by the Home Rule Act.

2. The population and number or registered voters, by race, in the residency districts used to elect members of the Edgefield County Council. If these figures are available by voting precinct, please supply. In addition, please provide a map of the residency districts.

3. An explanation of any past or pending litigation on the method of election of the Edgefield County Council.

4. The name(s) of blacks who have run for the Edgefield County Council in primary and general elections, the year and the results of those elections. In addition, please supply these figures by voting precinct if they are available.

5. An explanation of whether there was any attempt to conduct a referendum on the form of government in Edgefield County. In addition, please provide the names and telephone number of a few black citizens in the county who would be familiar with the change occasioned by home rule implementation and its effect on the black community.

As you know the Attorney General has 60 days in which to condiser a submission pursuant to Section 5. This 60

day period will commence when this Department receives the information necessary to evaluate properly the change proposed in your submission.

If you have any questions concerning the matters discussed in this letter or if we can aid you in any way to obtain the additional information we have requested, please do not hesitate to call Ms. Elizabeth Dunlgan (202) 633-3811 of our staff, who has been assigned to handle this submission. Please refer to File A7852 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

DREW. S. DAYS III
Assistant Attorney General
Civil Rights Division

By:

GERALD W. JONES
Chief, Voting Section

cc: Mr. Neil Bradley

EXHIBIT M

* * * *

[EXHIBIT N appears in the Juris. S.A. at 40.]

[Letterhead omitted in printing]

DECEMBER 16, 1980

Gerald W. Jones, Esquire
Chief, Voting Section
United States Department of Justice
Civil Rights Division
Washington, D.C. 20530

RE: Submission Under Voting Rights Act - Act 1104 of 1966 (R1357, H2559). Justice File Number D5564.

Dear Mr. Jones:

I am in receipt of your recent letter in which you requested information as to whether or not the above-cited Act had been submitted to the Justice Department. I have checked my files and do not find a record of a submission on this Act; however, I have talked to Mr. Charles Coleman, Edgefield County Attorney, and he has informed me that he believes this Act

was submitted and approved. It is, therefore, possible that the Act was submitted by the county. You may, therefore, wish to contact Mr. Coleman directly regarding this question.

However, this Act is not the governing Act for Edgefield County. In 1971, an act bearing ratification number R722 was enacted which amended the 1966 law in regard to the election districts and the county council. This Act was submitted on July 21, 1971 and approved on November 24, 1971.

Very truly yours,

s/
TREVA G. ASHWORTH
Senior Assistant Attorney General

TGA:rl

cc: Charles Coleman, Esq.
Laughlin McDonald, Esq.
Armand Derfner, Esq.
Karen L. Henderson, Esq.

EXHIBIT O

JPT:JMC:DH:mab
DJ 166-012-3
D5564

Washington, DC 20530

31 DEC 1980

Charles W. Coleman, Esq.
Edgefield County Attorney
Post Office Box 77
Edgefield, South Carolina 29824

Dear Mr. Coleman:

This is in reference to the status under Section 5 of the Voting Rights Act of 1964, as amended, 42 U.S.C. 1973c, of Act No. 1104 (1966) (R1357, H2559).

In her letter of December 16, 1980, South Carolina Senior Assistant Attorney General Treva G. Ashworth indicated that you believe that this act has been precleared pursuant to Section 5. In order that this question may be resolved, please inform us of the information on which your belief is based.

If you have any questions concerning

this letter, please feel free to call Voting Section Attorney David H. Hunter, [202] 724-7189. Please refer to File No. D5564 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney
General
Civil Rights Division

By:
s/
GERALD W. JONES
Chief, Voting Section

cc: Treva G. Ashworth, Esq.
Karen LeCraft Henderson, Esq.
Laughlin McDonald, Esq.
Armand Derfner, Esq.

EXHIBIT P

EDGEFIELD COUNTY COUNCIL MEETING

OCTOBER 2, 1979

* * * *

Council is in receipt of a correspondence from Mr. T. C. McCain dated September 19, 1979 requesting that council inform him as to what action council has taken or plans to take in reference to the county Citizens Advisory Committee's recommendation as to the method of election in Edgefield County to be approved by the United States Justice Department.

Chairman Lybrand requested County Attorney Charles Coleman to contact the United States Justice Department and discuss with them the rulings in the Horry County and Charleston County cases which are identical to the Edgefield County case. County Attorney Coleman was present and advised the council that he had

discussed this matter with a Mr. Tanner, assistant U. S. Attorney in charge of voting rights recently appointed to our South Carolina District. Mr. Tanner did confirm that Edgefield County could not change its form of government or method of election in light of the ruling in Horry County and Charleston County. It would require state legislation in order to change from our present method of election to single member districts. To attempt to make a change without this state legislation would be in violation with existing state laws. If state legislation is passed in the coming year to allow the county to change the method of election, it would probably be in 1982 before the change is made in order to utilize the 1980 census data.

Chairman Lybrand requested that County Attorney Coleman draft a letter

to Mr. McCain so advising him that no action can be taken at the present time.

EXHIBIT Q

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Thomas C. McCain, et al., Plaintiffs, v. Charles E. Lybrand, et al., Defendants.	CIVIL ACTION NO. 74-281 AMENDMENT TO STIPULATIONS

The parties by counsel amend their Stipulations dated June 30, 1981, as follows:

STIPULATION NO. 8

After the filing of the Stipulations, counsel learned that Act No. 1042 of 1974 had in fact been submitted to the United States Department of Justice for pre-clearance on or about May 29, 1974, and that that Department by letter dated July 22, 1974, had interposed no objection to its provisions. Therefore,

Stipulation No. 8 should read as follows:

8. Act No. 1104 of 1966 was also amended in 1967 (Act No. 55), in 1968 (Act No. 1318) and in 1974 (Act No. 1042). Those acts did not alter the method of election of the Edgefield County Council and, except for Act No. 1042 of 1974, they were not submitted to the United States Department of Justice for pre-clearance or to the United States District Court for the District of Columbia for judicial review. Act No. 1042 of 1974 was submitted to the United States Department of Justice for pre-clearance and that Department interposed no objection to its provisions. Copies of those acts are attached hereto, made a part hereof and designated Exhibit E.

STIPULATION NO. 20

Stipulation No. 20 now begins:

"During May, 1977, ..." It should begin as follows: "During May, 1979, ..."

STIPULATION NO. 24

Stipulation No. 24 does not include the fact that the plaintiffs moved to amend their complaint to challenge the action taken by the Edgefield County Council on April 21, 1980, and during July, 1980. Stipulation No. 24 should read as follows:

24. In the meantime, the plaintiffs moved to amend their complaint to enjoin an alleged "change" under the Voting Rights Act which occurred when the Edgefield County Council decided to ask the Court to reconsider its April 17, 1980, order and not to pursue its motion made on April 21, 1980, to inquire into the implementation of single member election

districts, to require the pre-clearance of Act No. 1104 of 1966 and to enjoin implementation of the objected-to 1976 resolution and ordinance. Allowance to amend was granted in two orders, one entered on November 24, 1980, and the other on January 6, 1981.

STIPULATION NO. 28

Stipulation No. 28 stipulates to the genuineness of the documents listed therein. The exhibit listed as Exhibit Q is not included therein and Exhibit R is designated as Exhibit Q. Those two exhibits should be described as follows:

Q. Edgefield County Council meeting, October 2, 1979, minutes; and

R. Letter to T. C. McCain from H. O. Carter, April 12, 1979. [A copy of Exhibit R is attached hereto.]

In addition, the genuineness of the fol-

lowing documents is stipulated to:

S. Letter dated May 21, 1980, from Laughlin McDonald, to Charles Coleman;

T. Letter dated June 17, 1980, from the Honorable Robert F. Chapman to Laughlin McDonald;

U. Letter dated June 27, 1980, from Laughlin McDonald to the Honorable Robert F. Chapman; and

V. Letter dated July 17, 1980, from Karen LeCraft Henderson to the Honorable Robert F. Chapman.

Stipulated and agreed to this 31st day of July, 1981.

S/
LAUGHLIN McDONALD
Attorney for the Plaintiffs

S/
KAREN LeCRAFT HENDERSON
Attorney for the Defendants

[Letterhead omitted in printing]

April 12, 1979

Mr. T. C. McCain, Chairman
Edgefield County Democratic Party
Route 4 Box 123
North Augusta, SC 29841

Dear Mr. McCain:

As you are aware, the U. S. Justice Department has interposed an objection as to the method of election for electing Council members in Edgefield County. The present method of election is "at large with residency requirement."

On April 4, 1979, the Council conducted a public hearing to inform the citizens of Edgefield County of the objection and to determine the desire of the citizens for submitting an alternate method of election for electing Council members that might be acceptable to the Justice Department.

EXHIBIT R

It appeared to be the concensus of opinion of those present to submit a plan utilizing "Single Member Districts" and appoint a Citizens Advisory Committee to assist in establishing geographic Council Districts.

At the regular Council Meeting on April 9, 1979, the Council voted to pursue, submitting a plan to the Justice Department changing to "Single Member Districts" and to appoint a Citizens Advisory Committee to assist in establishing the geographic Council Districts.

You, as Chairman of the Edgefield County Democratic Party are hereby requested to appoint one citizen from each voting precinct in the County to serve on the Advisory Committee. The Chairman of the Edgefield County Republican Party will be asked to appoint twelve members, one from each precinct also.

Mr. Bobby Bowers, Chief, Office of Demographic Statistics, S.C. Division of Research and Statistical Services, who has access to necessary data, has been asked to assist the County and this committee in establishing these districts.

The first meeting of this Advisory Committee has been scheduled for Tuesday, May 1, 1979 at 7:00 p.m. in the Edgefield County Courthouse.

This is a very serious matter and the Edgefield County Council respectfully request that you appoint and encourage the one member from each precinct to be present at this meeting.

Would very much appreciate your advising the Council Office of the names of the twelve members appointed by you, their address and telephone number in order that we can advise them of future meetings.

If you have any questions, you may contact the County Attorney (637-3194) or the County Administrator (637-5381).

Sincerely,

S/_____
H. O. Carter
County Administrator

HOC:ms

cc: Senator Knots
Senator McMillan
Senator Setzler
Senator Turnipseed
Representative Reel
Mr. Bobby M. Bowers
Mr. Charles W. Coleman, County Attorney
Mr. Charles E. Lybrand, Chairman
Mr. Eugene Huiett, Sr., Vice-Chairman
Mr. Henry M. Herlong, Jr., Councilman
Mr. James E. Padgett, Councilman
Mr. J. Bland Williams, Councilman

[Letterhead omitted in printing]

May 21, 1980

Mr. Charles Coleman
Attorney at Law
Edgefield, SC 29824

Dear Charles:

We have discussed reapportionment of the Edgefield County Council with our clients and have considered various alternatives. It is our feeling that while enlarging the Council has certain political advantages, given the size of Edgefield and the continuing expense involved in expansion, a five member Council is preferable. We also continue to approve the reapportionment plan recommended by the citizens advisory committee and urge its adoption.

As an alternative, and in the spirit of accommodation, we are willing to

EXHIBIT S

consider a plan utilizing an at-large feature. Specifically, we would be willing to accept a four-one plan dividing the county into four single member districts with the chairman of the commission elected at-large. Election of all seats would be by plurality vote. Such a plan would insure representation for all areas and races in the county and at the same time retain at-large voting to meet possible objections to a pure ward system.

It is my understanding that a five seat plan has already been prepared by Bobby Bowers of the State Reapportionment Office in Columbia. I suspect that Mr. Bowers could draft a 4-1 plan as well. In any case, I would be willing to prepare a plan myself for your consideration.

If we are able to reach an agreement, I suggest that a special primary he held in the early summer so that the general

election could be held as scheduled in November.

A new plan conceivably would have to be drawn when the census is available for the 1982 elections, but it may very well be that the changes would be minimal.

I will be happy to come to Edgefield and meet with you and members of the Council if you think that would be helpful. In any case, please let me hear from you as soon as is convenient. I feel obligated to let Judge Chapman know whether we can reach a settlement, or whether to continue with the litigation.

As I told you on the phone, I am hopeful that we can reach an agreement without further expense and delay.

Best wishes.

Sincerely,

Laughlin McDonald
LMcD:msb

cc: Tom McCain
Armand Derfner
C. Tolbert Goolsby

[Letterhead omitted in printing]

June 17, 1980

Laughlin McDonald, Esq.
ACLU Foundation, Inc.
52 Fairlie Street, NW
Suite 355
Atlanta, GA 30303

RE: Civil Action No. 74-2819
McCain v. Lybrand

Dear Mr. McDonald:

You indicated in your letter of May 29 that you would let me know something by the middle of June. I have not heard anything from the negotiations in this matter and would appreciate it very much if you and the other side could advise me one way or the other about settlement by the first of July. This is an old case and I would like to dispose of it, since it is taking up a lot of room in my filing cabinet.

EXHIBIT T

With best wishes, I remain

Sincerely,

s/
Robert F. Chapman

RFC/nk
CC: C. Tolbert Goolsby, Esq.
Charles W. Coleman, Esq.
Armand Derfner, Esq.

[Letterhead omitted in printing]

June 27, 1980

Hon. Robert F. Chapman
United States District Court
P.O. Box 867
Columbia, SC 29202

RE: McCain v. Lybrand,
Civil Action No. 74-2819

Dear Judge Chapman:

As you may know, Mr. Charles Coleman, Edgefield County attorney, is presently recuperating from heart surgery. I have, however, been in touch with Mr. Henry Herlong, Mr. Coleman's law associate and a member of the Edgefield County Council. Mr. Herlong and I have discussed at some length settlement of this case and reapportionment of the council.

The next Council meeting is scheduled for Tuesday night, July 1, 1980. Mr. Herlong has agreed to have settlement

EXHIBIT U

discussed at that time with an eye to the Council's taking a definite position. We will promptly communicate with the Court concerning the status of this litigation.

I remain hopeful that settlement is a real possibility and appreciate your forebearance.

Sincerely,

Laughlin McDonald
LMcD:msb

cc: Henry Herlong
C. Tolbert Goolsby
Armand Derfner

[Letterhead omitted in printing]

July 17, 1980

Honorable Robert F. Chapman
United States District Judge
Post Office Box 867
Columbia, SC 29202

RE: McCain vs. Lybrand,
Civil Action No. 74-2819

Dear Judge Chapman:

Pursuant to a meeting with the defendant members of the Edgefield County Council, I am writing to advise you that it appears that the matter cannot be settled and that, accordingly, they are requesting that you consider and rule upon their motion to alter, amend or vacate judgment filed on April, 1980, based upon the holding in City of Mobile, Alabama v. Bolden, ____ U.S. ____, 64

EXHIBIT V

L.Ed.2d 47, 100 S.Ct. ____ (1980).

With kind regards,

s/
Karen LeCraft Henderson
Senior Assistant Attorney General

KLH/jvh

cc: Laughlin McDonald, Esq.
Charles W. Coleman, Esq.

[Letterhead omitted in printing]

Mr. James H. Quackenbush, Jr.
Assistant Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211

Dear Mr. Quackenbush:

This is in reference to your letter of July 21, 1971, concerning the Attorney General's approval of 18 Acts you have submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

The Attorney General does not interpose any objections to H2184. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

With respect to H2206, it is necessary for the Attorney General, in order to properly fulfill his responsibilities under Section 5, to have sufficient data to determine the possible racial effect of the voting change in question. After a preliminary examination of H2206, it does not appear that we have sufficient information to evaluate the change you have submitted. In this respect, would you kindly assist us by providing maps showing the boundaries of the County Council election districts under the existing statute as well as under H2206. Also, would you please provide population and registration statistics, by race, for the present election districts and the proposed election districts as well as a copy of the election statute now in force. It will also be necessary for us to know the names, and race, of all

candidates for County Council in the last two primary and general elections, and the results of these elections by district.

As you know, the Attorney General has a 60-day period to consider enactments submitted pursuant to Section 5. This time period will begin to run when the Department has available the information necessary to evaluate H2206.

We regret the need to request additional information at this late date but, due in part to the amount of material in your submission which had to be examined, it was not possible to complete examination of all the Acts at the same time.

With respect to the other 16 Acts submitted they do not enact "any voting qualification or prerequisite to voting different from that in effect on November 1, 1964" and, therefore, need not have been submitted to the Attorney General

for review under Section 5 of the Voting Rights Act of 1965.

Sincerely,

s/
David L. Norman
Assistant Attorney
General
Civil Rights Division

[Letterhead omitted in printing]

September 14, 1971

CERTIFIED MAIL

Honorable Butler C. Derrick, Jr.
Member, House of Representatives
Edgefield County Legislative Delegation
Box 512
Edgefield, SC 29824

Dear Mr. Derrick:

On the 25th day of June, 1971, the Governor of South Carolina signed into law House Bill H2206, which pertains to an increase in the number of districts and the number of county council members for Edgefield County.

On July 21, 1971, this act was forwarded to the Attorney General of the United States for his study as to the existence of any possible violations of Section 5 of the Voting Rights Act of 1965. On September 14, 1971, this office

was contacted by the Department of Justice and requested to furnish additional information which would allow the Department to make final adjudication as to this legislation. The information that is sought by the Justice Department can be most readily provided by the submitting delegation, and this office requests your assistance in providing the answers as expeditiously as possible. The questions asked by the Justice Department were:

1. To provide maps showing the boundaries of the county council election districts under the prior statute as well as under H2206.

2. In Addition, they would like you to provide population and registration certificates, by race, for the present election districts and proposed election distircts, as well as a copy of the election statute now in force.

3. It will be necessary to furnish the names and race of all candidates for county council in the last two primary and general elections, and the results of these elections by district.

The South Carolina Attorney General's office would appreciate your immediate response to these inquiries to insure that this legislation is upheld under the provisions of the 1965 Voting Rights Act.

Very truly yours,

s/
James H. Quackenbush, Jr.
Assistant Attorney General

JHQ/mn

September 24, 1971

Samuel Reese, Esquire
United States Department of Justice
Civil Rights Division
Voting and Public Accommodations
Section
Washington, D.C. 20530

Dear Mr. Reese:

Enclosed is the correspondence from the Edgefield County Delegation concerning the legislation that required further clarification (H2206). I am forwarding this to you singularly in preference to waiting until all the requested information is combined due to the time limit involved.

If I can be of further help, please do not hesitate to contact me at your convenience.

Very truly yours,

s/
James H. Quackenbush,
Jr.
Assistant Attorney
General

JHQ/mn

enclosures

[Letterhead omitted in printing]

September 21, 1971

James H. Quackenbush, Jr., Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

In Re: County Council

Dear Mr. Quackenbush:

Thank you for your letter of September 14th. Pursuant to your request, I am pleased to provide you with the following information, to-wit:

1. Please find enclosed maps showing the boundaries of the County Council Election Districts under the prior Statute as well as under H2206.

Population by race for the present proposed election districts is not fur-

nished as the census was not taken by election districts. Registration Certificates by race for the present election districts and proposed election districts are indicated on Exhibits 4, 5 and 6. Copies of the election Statute now in force are shown as Exhibits 7 and 7A.

The names of all candidates for County Council in the last two primary general elections and the results of these elections by district are shown as Exhibits 8 and 8A. In 1968 Charles E. Lybrand ran with no opposition from district No. 1. Roy A. Harling and Eugene Huiet were candidates from district #2. Walter Morgan and Frank E. Timmerman were candidates from district No. 3. In 1970 Charles E. Lybrand and Walter Morgan ran without opposition. Roy A. Harling and Eugene Huiet ran from district No. 2.

Hoping this information is sufficient for your purposes, I am,

Respectfully

s/
Butler C. Derrick, Jr.

BCD/mmw

Encl.

#4

As of August, 1971 -

Total registered 5,749 (a loss of 188)

White 3,564 (loss of 239)

Negro 2,185 (gain of 51)

#5

No. 1	W	C	
Johnston #1	403	380	
Johnston #2	632	95	
Long Branch	88	10	
Central	81	19	
Bacon	60	18	
	1,264	522	(1,786)
No. 2			
Trenton	327	427	
Merriwether	496	116	
Collins	93	9	
Cleveland	63	11	
Red Hill	140	3	
	1,119	566	(1,685)

No. 3	W	C	
Edgefield #1	441	233	
Edgefield #2	540	411	
Kendall	161	27	
Moss	85	58	
Rock Hill	34	152	
Pleasant Lane	61	90	
Meeting Street	98	75	
	1,420	1,046	(2,466)
TOTAL	3,803	2,134	(5,937)

#6.

No. 1	W	C	
Johnston #1	403	380	
Johnston #2	632	95	
Long Branch	88	10	
	1,123	485	(1,608)
No. 2			
Trenton	327	427	
Central	81	19	
Bacon	60	18	
	468	464	(932)
No. 3			
Edgefield #1	441	233	
Edgefield #2	540	411	
	981	644	(1,625)

No. 4	W	C	
Merriwether	496	116	
Collins	93	9	
Cleveland	63	11	
Kendall	161	27	
	813	163	(976)
No. 5			
Red Hill	140	3	
Rock Hill	34	152	
Moss	85	58	
Meeting Street	98	75	
Pleasant Lane	61	90	
	418	378	(796)

Figures are as of February 25, 1971.

[Exhibit #7 appears, supra, at 167].

[STATUTES AT LARGE]

OF SOUTH CAROLINA 2767

GENERAL AND PERMANENT LAWS--1966

(R1357, H2559)

NO. 1104

An Act To Divide Edgefield County Into Districts For Certain Purposes and To Provide A System of County Government For Edgefield County.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Edgefield County divided into three districts.--For the purposes of elections as provided herein and such other elections and purposes as may be provided by law, Edgefield County is divided into three districts as follows:

District No. 1 shall be composed of Johnston No. 1, Johnston No. 2, Long Branch, Central and Bacon precincts.

District No. 2 shall be composed of Trenton, Merriwether, Colliers, Cleveland and Red Hill precincts.

District No. 3 shall be composed of Edgefield No. 1, Edgefield No. 2, Kendall, Moss, Rock Hill, Pleasant Lane and Meeting Street precincts.

SECTION 2. System of government for Edgefield County.--There is hereby created for Edgefield County a system of county government as set forth in this act.

SECTION 3. County council created--members--elections--vacancies--county administrator.--There is hereby created the Edgefield County Council (council) which shall be composed of three members who shall be elected at the same time as

the general election in November of 1966 and at each general election thereafter to serve for terms of two years or until their successors are elected and qualify. One member with the largest plurality shall be elected from the county at large from each of the three districts of the county. Any qualified elector in the district may qualify as a candidate for member of the council from that district by filing with the Clerk of Court of Edgefield County on or before twelve o'clock noon, August 15, 1966. Thereafter, candidates shall file and be nominated as candidates are for other county office. Vacancies on the council shall be filled by appointment by the

Governor upon the recommendation of the membership of the House of Representatives from Edgefield County for the unexpired portion of the term only. The council shall employ a county administrator who shall be the administrative officer for the county at such a salary and term as is determined by the council. The council shall require such bond of the county administrator as it deems ad- /27

[Exhibits 8, 8A and 9 omitted in printing].

Office - Supreme Court, U.S.
FILED
SEP 13 1982
CLERK

NO. 82-282

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

Thomas C. McCain and William Spencer, individually and on behalf of all those similarly situated,

Appellants,

vs.

Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W. T. Timmerman, individually and as members of the County Council of Edgefield County; Norman Dorn, John S. Edwards, and Richard A. Beals, individually and as members of the Board of Election Commissioners of Edgefield County, S.C.; and J. M. Pendarvis, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Appellees.

ON APPEAL FROM THE THREE-JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

MOTION TO DISMISS OR AFFIRM

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.
Deputy Attorney General

KAREN LeCRAFT HENDERSON*
Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 758-8820

CHARLES W. COLEMAN
Attorney at Law

Post Office Box 70
Edgefield, SC 29824

ATTORNEYS for Appellees.

*Counsel of Record

TABLE OF CONTENTS

	Page
Opinion Below	2
Jurisdiction	2
Statute Involved	2
Statement	3
Argument:	
I. There Is No Substantial Question Presented	9
A. Act No. 1104 of 1966 and the 1971 amendment thereto	9
B. The June 21, 1976, ordinance and resolution	15
II. There Is No Conflict In Decisions	18
Conclusion	21

TABLE OF AUTHORITIES

CASES:	Page
Blanding v. DuBose, 509 F.Supp. 1334 (D.S.C. 1981), rev'd 50 U.S.L.W. 3543 (U.S. January 12, 1982)	14
City of Mobile v. Bolden, 446 U.S. 55 (1980)	4,5

Cases: (cont'd) Page

Garcia v. Uvalde County, 455 F.Supp. 101 (1978), aff'd 439 U.S. 1059 (1979) 14

Georgia v. United States, 411 U.S. 526 (1973). 14

Horry County v. United States, 449 F.Supp. 990 (D.S.C. 1978) 18,19,20

Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977) 15,17

McCain v. Lybrand, 376 F.Supp. 304 (D.S.C. 1974), rev'd sub nom. Lytle v. Commissioners of Election, 509 F.2d 1049 (4th Cir. 1974), cert. denied 419 U.S. 1032 (1974) . . . 4

Rogers v. Lodge, 50 U.S.L.W. 5041 (U.S. July 1, 1982) 5

Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979) 8,14,15 16,17,18 20

CONSTITUTIONAL PROVISIONS: Page

First Amendment 3

Thirteenth Amendment 3

Fourteenth Amendment 3

Fifteenth Amendment 3,4

STATUTORY PROVISIONS:

United States Code

42 § 1971 4

STATUTORY PROVISIONS: (Cont'd) Page

42 § 1973c [§ 5, 1965 Voting Rights Act] . . . . . passim

42 § 1983 4

Code of Laws of South Carolina, 1976, as amended

§§ 4-9-10 et seq 6,7,15, 17

South Carolina statutes at large

Act No. 1104 of 1966 [54 STAT. 2767 (1966)] 5,6,9, 10,11

Act No. 521 of 1971 [57 STAT. 989 (1971)] 6,7,8, 10,11, 12,15

Act No. 283 of 1975 [59 STAT. 692 (1975)] 6

MISCELLANEOUS:

Rule 16.1(c) of the Rules of the Supreme Court of the United States 1

Rule 16.1(d) of the Rules of the Supreme Court of the United States 1

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

Thomas C. McCain and William Spencer, individually and on behalf of all those similarly situated,

Appellants,

vs.

Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W. T. Timmerman, individually and as members of the County Council of Edgefield County; Norman Dorn, John S. Edwards, and Richard A. Beals, individually and as members of the Board of Election Commissioners of Edgefield County, S.C.; and J. M. Pendarvis, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Appellees.

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16.1(c) and (d) of the Rules of the Supreme Court of the United States, the appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the three-judge United States District Court for the District of South Carolina on the grounds that it is manifest that the questions on which the

decision of the cause depends are so unsubstantial as not to need further argument and that there is no conflict in decisions.

OPINION BELOW

The order of the three-judge district court is set forth in the appellants' jurisdictional statement. Jurisdictional Statement, App. at 1a.

JURISDICTION

The jurisdictional requisites are adequately set forth in the appellants' jurisdictional statement. Jurisdictional Statement at 1.

STATUTE INVOLVED

Pertinent provisions of Section 5 of the Voting Rights Act of 1965 [42 U.S.C. § 1973c] are set forth in the appellants' jurisdictional statement. Jurisdictional Statement, App. at 25a.

STATEMENT

This appeal is from the order of the three-judge district court dated May 10, 1982, holding that the current method of electing the members of the Edgefield County Council has not been put into effect in violation of Section 5 of the Voting Rights Act of 1965 and denying the appellants' request for injunctive relief. Jurisdictional Statement, App. at 1a.

The appellants are two black voters of Edgefield County, South Carolina, and the defendants are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the executive committee of the Edgefield County Democratic Party.

The appellants filed their original complaint in this action on February 26, 1974, alleging, first, that the at-large method of electing the Edgefield County Council diluted black voting strength in violation of the First, Thirteenth, Fourteenth and Fifteenth

Amendments and 42 U.S.C. §§ 1971, 1973 and 1983 and, second, that the Edgefield County Council residency districts were malapportioned. On May 16, 1974, the district court granted summary judgment to the appellants on their malapportionment claim. McCain v. Lybrand, 376 F.Supp. 304 (D.S.C. 1974). The Fourth Circuit Court of Appeals, however, reversed sub nom. Lytle v. Commissioners of Election, 509 F.2d 1049 (4th Cir. 1974), and this Court subsequently denied a petition for a writ of certiorari. McCain v. Lybrand, 419 U.S. 1032 (1974).

The dilution issue was tried on November 24 and 25, 1975, and on April 17, 1980, the district court entered an order finding that the at-large method of election infringed on the appellants' rights to due process and equal protection of the laws in connection with their voting rights. On April 25, 1980, the appellees moved to alter, amend or vacate the judgment on the basis of the intervening decision in City of Mobile v. Bolden, 466 U.S.

55 (1980). Their motion was granted on August 11, 1980, with leave to introduce additional evidence on the issue of intent to discriminate. Before that hearing could be conducted, however, the appellants were allowed to amend their 1974 complaint to add their claims under Section 5 of the 1965 Voting Rights Act, which necessitated the convening of the three-judge district court. The "intent" hearing remains pending before the district court, the appellants having moved to reinstate the April 17, 1980, order on the basis of Rogers v. Lodge, 50 U.S.L.W. 5041 (U.S. July 1st, 1982).

On and prior to November 1, 1964, Edgefield County was governed by a board of county commissioners, consisting of an elected supervisor and two appointed commissioners. On June 1, 1966, the South Carolina General Assembly enacted Act No. 1104 creating the Edgefield County Council. It consisted of three members, with one member elected from the county at-large from each of three designated

residency districts. Although Act No. 1104 of 1966 was subject to the pre-clearance provisions of Section 5, it was neither submitted to the United States Department of Justice nor judicially reviewed by the United States District Court for the District of Columbia.

Act No. 1104 of 1966 was amended by Act No. 521 of 1971 which increased the number of Edgefield County Council members from three to five and, accordingly, added two more residency districts. Act No. 521 of 1971 was submitted to the United States Attorney General for pre-clearance on September 24, 1971, and the Attorney General interposed no objection to its provisions.

Then, in 1975, pursuant to Article VIII of the South Carolina Constitution, the General Assembly of South Carolina enacted Act No. 283, the "home rule" legislation, now codified as Sections 4-9-10 et seq. of the 1976 Code of Laws of South Carolina. Act No. 283 authorized all South Carolina counties

to select by referendum one of five forms of county government before July 1, 1976. If no referendum had been held by then, the county automatically had as of that date the form of government, including method of election, "most nearly corresponding to the form in effect immediately prior to that date" [§ 4-9-10(b), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended], which, in the case of Edgefield County, the General Assembly determined to be the council-administrator form. Edgefield did not hold a referendum by July 1, 1976, and so, as of that date, it had the council-administrator form of county government. The method of election remained that prescribed by Act No. 521 of 1971, which had theretofore been pre-cleared pursuant to Section 5 of the Voting Rights Act. The home rule legislation itself was pre-cleared by the United States Attorney General on August 28, 1975.

On June 21, 1976, the Edgefield County

Council implemented the provisions of the "home rule" legislation by enacting an ordinance and resolution formally adopting the council-administrator form of government and retaining the method of election prescribed by Act No. 521 of 1971. The ordinance was not submitted for Section 5 preclearance and, on August 3, 1978, the United States Department of Justice wrote to Edgefield County requesting that the 1976 ordinance be submitted. That Department wrote again on September 20, 1978, renewing its request and, by letter dated September 29, 1978, Edgefield County's implementation of "home rule" was submitted for pre-clearance. After requesting additional information, the United States Attorney General interposed an objection to Edgefield County's submission on February 8, 1979. Subsequently, in Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979), a three-judge district court held that the preclearance of the "home rule" legislation effectively pre-cleared a county which had held

no referendum on form of government and had retained its pre-home rule method of election. Nevertheless, in view of the Attorney General's outstanding objection, the appellees pursued the alternative of the single-member district method of election and appointed a citizens advisory committee to propose single-member districts. When the appellants moved to enjoin the 1980 elections and the district court issued its subsequently-vacated April 17, 1980, order, however, the plans were held in abeyance until a definitive ruling by the district court on the validity of the at-large method of election.

ARGUMENT

I. There is no substantial question presented.

A. Act No. 1104 of 1966 and the 1971 amendment thereto.

The three-judge district court rejected the appellants' argument that Edgefield County's at-large method of election has never been pre-cleared, declaring:

> ... Plaintiffs' arguments would require this court to find that the Attorney General did not consider the effect of at-large, as opposed to district, voting when he elected not to object to 1971 Act No. 521. Analysis of both the facts before the Attorney General and his requests for additional information do not bear out plaintiffs' argument. Jurisdictional Statement, App. at 10a.

The lower court discussed at length the exchange of correspondence between the United States Department of Justice and public officials in South Carolina in 1971 when the United States Attorney General had before him for pre-clearance the 1971 amendment to Act No. 1104 of 1966. Id. at 10a - 12a. After examining the correspondence, the lower court concluded that the "Justice Department's review of Act No. 521 [of 1971] encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966" and that "any defect in the 1966 Act No. 1104

is moot." Id. at 12a.

The lower court also analyzed the language of the two acts and concluded that that language "compels rejection of plaintiffs' contention that failure to submit Act No. 1104 dooms the present method of electing the Edgefield County Council." Id. at 13a. Sections 1 and 3 of the 1966 legislation had established an at-large with residency districts method of election for a three-member council. Stipulations, No. 4 and Exhibit B. The 1971 amendment amended Sections 1 and 3 as follows:

> SECTION 1. Edgefield County divided into districts. - Section 1 of Act 1104 of 1966 is amended by striking it out and inserting:
>
> 'Section 1. For the purposes of elections as provided herein and such other elections and purposes as may be provided by law, Edgefield County is divided into five districts as follows:
>
> District No. 1 shall be composed of Johnston No. 1, Johnston No. 2 and Long Branch precincts.
>
> District No. 2....
>
> District No. 3....
>
> District No. 4....
>
> District No. 5....'

> SECTION 2. Edgefield County Council.- Section 3 of Act 1104 of 1966, as amended, is further amended by striking it out and inserting:
>
> 'Section 3. There is hereby created the Edgefield County Council (council) which shall be composed of five members who shall be elected in each general election to serve for terms of two years and until their successors are elected and qualify. One member with the largest plurality shall be elected by the county at large from each of the five districts of the county....' Stipulations, No. 6 and Exhibit C. [Emphasis added.]

The language of the 1971 Act provides completely for a method of electing the Edgefield County Council members. It stands entirely on its own, as if the earlier legislation had been repealed (which, in effect, it had been) or never enacted at all. Edgefield County's present method of election, then, which is unchanged by the implementation of "home rule" in that county [infra at 15-16], is that provided for by Act No. 521 of 1971 which has been precleared by the United States Department of Justice.

Moreover, the lower court's opinion does

not usurp the Section 5 function reserved to the United States Attorney General and to the District Court for the District of Columbia nor does it conflict with controlling decisions of this Court. This action is one to determine the applicability of Section 5 of the Voting Rights Act, not to review the United States Attorney General's exercise of discretion. The appellants themselves recognize that the inquiry of a local three-judge court extends to a coverage question under Section 5 [Jurisdictional Statement at 14], which is precisely the focus of the lower court's inquiry. The Justice Department's assertion that the 1966 legislation has not been pre-cleared is reviewable because that assertion necessarily relates to the applicability of the provisions of Section 5 and to the authority or jurisdiction of the Justice Department to require pre-clearance, matters which, this Court has repeatedly held, are proper for a local three-judge district court

to review. See, e.g., Garcia v. Uvalde County, 455 F.Supp. 101 (1978), aff'd 439 U.S. 1059 (1979); Georgia v. United States, 411 U.S. 526 (1973); see also, Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979). The appellants' reliance on Blanding v. DuBose, 509 F.Supp. 1334 (D.S.C. 1981), rev'd 50 U.S.L.W. 3543 (U.S. January 12, 1982), is misplaced because there the United States Attorney General had objected to a Section 5 change and the lower court reversed that determination. Here, there is no outstanding objection to the 1966 enactment; instead, the Justice Department has determined that the 1966 enactment is subject to pre-clearance and, as already noted, that determination can be reviewed and reversed by a local three-judge district court. 1/

1/ Moreover, in Blanding v. DuBose, Sumter County, South Carolina, did not nave a pre-"home rule" method of election which had already been pre-cleared under Section 5 and which was retained unchanged pursuant to the "home rule" legislation as is the case in Edgefield County.

B. The June 21, 1976, ordinance and resolution.

The lower court also rejected the appellants' argument that the June 21, 1976, ordinance and resolution implementing "home rule" in Edgefield County constitute changes subject to Section 5 pre-clearance, [2/] relying primarily on Woods v. Hamilton, supra. Jurisdictional Statement, App. at 16a-18a. In Woods, a three-judge district court ruled that a South Carolina

---

2/ Pursuant to provisions of the "home rule" legislation, each county council in South Carolina was required to formally adopt by resolution the appropriate form of government, whether pre-assigned or selected by referendum, and to provide by ordinance for the election of county council members in accordance with the appropriate method of election, whether provided for by pre-"home rule" legislation and retained or selected by referendum. § 4-9-10(a), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Although the appellants agree that the provisions of the "home rule" legislation as construed by the South Carolina Supreme Court in Infinger v. Edwards, 234 S.E.2d 214 (1977), continue in Edgefield County the exact method of election prescribed by Act No. 521 of 1971 [Stipulations, No. 27], they argue that the implementing ordinance and resolution constitute changes in voting required to be pre-cleared.

county which merely adopts a resolution and an ordinance implementing "home rule" in that county while maintaining precisely the method of election for county council members which was in effect before the enactment of the "home rule" legislation does not effect a change within the meaning of Section 5 of the 1965 Voting Rights Act. In granting summary judgment to the defendants therein, that court declared:

> Plaintiffs' final argument concerning the implementation of Home Rule in Charleston County is that, even if the transfer of powers to Charleston County were precleared, and even if both old and new county government were identical, the resolution and ordinances passed by County Council implementing Home Rule constituted "changes." This argument fails for two reasons.
>
> First, it is doubtful that the ministerial act of passing adoptive ordinances, such as done here, was ever intended by Congress to be a "change" when such adoptive ordinances merely implemented statutes which had previously been precleared. Secondly, even if Charleston County was required to submit the implementation ordinances to the Attorney General -- (which this court has determined was not necessary) -- .... 473 F.Supp. at 647. [Emphasis added.]

Woods also disposed of the argument that the assumption of new powers at the county level represents a "change" within the meaning of Section 5 of the Voting Rights Act by holding that the Justice Department's approval of the "home rule" legislation in general on August 28, 1975, constitutes pre-clearance. Id. at 644-5. With respect to the contention that the decision not to conduct a referendum constitutes a "change," the court decided:

> 7 The government plaintiff also takes the position that the choice itself under the Home Rule Act not to conduct a referendum, and the consequent assumption of an assigned form of government and method of election under S.C. Code § 4-9-10(b), constitutes a change in the form of government and method of election, even though the form and method of election of the "new" government are the same as the "old" government. This court disagrees. The simple fact is that under the particular situation existing in Charleston County, the "old " and "new" councils are elected in exactly the same way and have exactly the same composition. As the Supreme Court of South Carolina noted in Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977),

> the two Charleston County Councils exhibit "absolute identity" in relation to form of government and method of election. Therefore, this court holds that there has been no "change" as to these two factors. Id. at 644.

For the foregoing reasons, the appellees submit that there is no substantial question presented by the appellants which merits further review by this Court because the lower court's order is in accord with decisions of this Court.

II. There is no conflict in decisions.

The appellants contend that the lower court's order is in conflict with the opinion of the three-judge district court for the District of Columbia in Horry County v. United States, 449 F.Supp. 990 (D.D.C. 1978). Jurisdictional Statement at 20-22. That decision is easily distinguishable from the lower court's order, however, because in Horry County, the pre-"home rule" governing body in Horry County was appointed, not elected,

and accordingly the United States Department of Justice had never reviewed Horry County prior to the implementation of "home rule." When Horry County changed from an appointed governing body to an elected one pursuant to the "home rule" provisions, there is no question but that that change was one requiring Section 5 pre-clearance. But that situation does not exist in Edgefield County which had an elected governing body (which had been pre-cleared) before "home rule" and continued that elected governing body after "home rule." The appellant also argues that the Horry County decision declared that the reallocation of powers among different elected officials effected by the "home rule" legislation constitutes a Section 5 change. But the Horry County court declared that to be "[a]n alternative reason" for subjecting the new method of selecting the Horry County governing body to Section 5 pre-clearance. 449 F.Supp. at 995. Its declaration as to that issue therefore

amounts to mere dicta and does not result in a conflict with the lower court's ruling or with the Woods v. Hamilton decision. 3/

3/ The Woods court discussed the Horry County's declaration as follows:

> The issue of whether a transfer of power alone constitutes a 'change' triggering § 5 has never been resolved by the United States Supreme Court and, so far as this court can determine, this theory has only been accepted as valid by one court, the United States District Court for the District of Columbia, in Horry County v. United States, 449 F.Supp. 990 (1978). However, even in the Horry County case, the acceptance of this theory was characterized as an 'alternate reason' and, thus, such acceptance was not essential to the decision in the case. At oral argument, the attorney for the United States conceded that the issue is difficult, and he expressed his inability to draw a line between a reallocation of governmental powers that would constitute a 'change' affecting voting, and a reallocation which would not constitute such a 'change.' ... the court is of the opinion that, even if the transfer of power from the legislative delegation to the county council was a triggering 'change,' it was a 'change' which was precleared by the Attorney General of the United States by his actions in connection with submission of the Home Rule Act and Charleston County ordinances.... 473 F.Supp. at 644.

CONCLUSION

The appellees respectfully submit that the questions upon which the decision of the cause depends are so unsubstantial as not to need further argument and that there is no conflict in decisions and, therefore, respectfully move this Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the three-judge District Court for the District of South Carolina.

Respectfully submitted,

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.
Deputy Attorney General

KAREN LeCRAFT HENDERSON*
Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211

CHARLES W. COLEMAN
Attorney at Law

Post Office Box 70
Edgefield, SC 29824

ATTORNEYS FOR APPELLEES.

*Counsel of Record

CERTIFICATE OF SERVICE

I, KAREN LeCRAFT HENDERSON, counsel of record for the Appellees and a member of the Bar of this Court, do hereby certify that, in accordance with Rule 28, three (3) copies of the Appellees' Motion to Dismiss or Affirm were served on all parties required to be served on this date by depositing same in the United States mail, first-class postage pre-paid, and addressed to the counsel of record for the Appellants as follows: LAUGHLIN McDONALD, ESQUIRE, 52 Fairlie Street, N.W., Atlanta, Georgia 30303.

This 10th day of September, 1982.

Karen LeCraft Henderson

KAREN LeCRAFT HENDERSON
Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211

Office-Supreme Court, U.S.
FILED
FEB 28 1983
ALEXANDER L. STEVAS,

No. 82-282

In the Supreme Court of the United States

OCTOBER TERM, 1982

THOMAS C. MCCAIN, ET AL., APPELLANTS

v.

CHARLES E. LYBRAND, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

JESSICA DUNSAY SILVER
JAMES W. CLUTE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF CONTENTS

Page

Statement 1

Discussion 7

Conclusion 14

Appendix 1a

TABLE OF AUTHORITIES

Cases:

Allen v. *State Board of Elections*, 393 U.S. 544 ..... 8, 11, 14

Blanding v. *Dubose*, 454 U.S. 393 ..... 5, 8

City of Mobile v. *Bolden*, 446 U.S. 55 2

City of Richmond v. *United States*, 422 U.S. 358 3

City of Rome v. *United States*, 446 U.S. 156 8

Connor v. *Waller*, 421 U.S. 656 2

Georgia v. *United States*, 411 U.S. 526 3

Horry County v. *United States*, 449 F. Supp. 990 12-13

Lytle v. *Commissioners of Election*, 376 F. Supp. 304, aff'd and rev'd in part, 509 F.2d 1049, cert. denied, 419 U.S. 1032 2

Pitts v. *Cates*, 536 F.2d 56 12

Rogers v. *Lodge*, No. 80-2100 (July 1, 1982) 2

Page

Cases—Continued:

United States v. *Board of Supervisors*, 429 U.S. 642 2

United States v. *Georgia*, Civil Action No. C76-1531A (N.D. Ga. Sept. 30, 1977), aff'd, 436 U.S. 941 11

United States v. *Sheffield Board of Commissioners*, 435 U.S. 110 ..... 3, 7, 8, 9, 10. 11. 14

Woods v. *Hamilton*, 473 F. Supp. 641 ..... 6, 12, 13

Constitution, statutes and regulations:

U.S. Const. :

Amend. I 1

Amend. XIII 1

Amend. XIV 1

Amend. XV 1

Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, Section 3, 96 Stat. 134 2

Voting Rights Act of 1965, 42 U.S.C. 1971 1

Section 2, 42 U.S.C. 1973 ..... 1, 2

Section 5, 42 U.S.C. 1973c 2, 3

42 U.S.C. 1972 1

Home Rule Act, S.C. Code Ann. § 4-9-10 *et seq.* (Law. Co-op 1977) 4

1966 S.C. Act 1104 ..... 4, 5, 6, 7, 9, 12

Page

Constitution, statutes and regulations—Continued:

1971 S.C. Act 521 ..... 4, 6, 7, 10, 12, 13

28 C.F.R. (1980):

Section 51.5 8

Section 51.10(a)(4) 9

Section 51.10(b) 9

Section 51.18 9

Miscellaneous:

36 Fed. Reg. (1971):

pp. 9781 *et seq.* 9

pp. 18186 *et seq.* 9

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-282

THOMAS C. MCCAIN, ET AL., APPELLANTS

v.

CHARLES E. LYBRAND, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Appellants, black voters of Edgefield County, South Carolina, initiated this suit in 1974 against the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the Executive Committee of the Edgefield County Democratic Party. Appellants alleged that the County's use of an at-large system for electing members of the county council violated the United States Constitution and federal civil rights statutes[1] because it diluted black

---

[1]Specifically, appellants alleged violations of the First, Thirteenth, Fourteenth and Fifteenth Amendments and of 42 U.S.C. 1971, 1972 and 1973. J.S. App. 2a.

voting strength and because the residency districts from which council members ran were malapportioned. J.S. App. 2a-3a. The district court granted appellants' motion for summary judgment on the malapportionment claim, *Lytle* v. *Commissioners of Election*, 376 F. Supp. 304 (D.S.C.), but that ruling was reversed on appeal, 509 F.2d 1049, 1054 (4th Cir.), and this Court denied a petition for a writ of certiorari, 419 U.S. 1032 (1974).

Appellants' dilution claim was tried in 1975 and, after unsuccessful attempts to achieve a settlement, the district court granted judgment for appellants in April 1980. Shortly thereafter, this Court rendered its decision in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), and the district court granted appellees' motion to vacate its decision and reopened the case to permit the parties to submit additional evidence concerning whether the at-large scheme was adopted or maintained with discriminatory intent. The district court has not yet ruled on appellants' dilution claim. J.S. App. 4a-5a.[2]

---

[2]Appellants have moved to reinstate the April 1980 judgment in their favor on the basis of this Court's recent decision in *Rogers* v. *Lodge*, No. 80-2100 (July 1, 1982), and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, as amended by Section 3 of the Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 134. If appellants succeed in having the prior judgment reinstated, the questions raised by this appeal would be mooted. Nevertheless, we submit that it would be inappropriate for the Court to defer consideration of this appeal pending disposition below of the constitutional and Section 2 issues. This Court's decisions establish that courts should not pass on the constitutionality of legislation that is subject to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, but has not received preclearance thereunder because such legislation is not yet legally effective. See *United States* v. *Board of Supervisors*, 429 U.S. 642, 646-647 (1977); *Connor* v. *Waller*, 421 U.S. 656 (1975). Similar reasoning would apply to statutory challenges to unprecleared legislation.

Section 5 was designed as an alternative to "case-by-case litigation [, which] had proved ineffective in large part because voting suits had

2. The district court also permitted appellants to supplement their complaint to allege that the county's use of the at-large voting scheme violated Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, because it was a voting change implemented without the preclearance required by that statute.[3] A three-judge district court was convened to hear appellants' Section 5 claims. J.S. App. 2a, 5a. This appeal is from the three-judge court's order (J.S. App. 2a-22a) denying appellants' request for injunctive relief.

---

been 'unusually onerous to prepare' and 'exceedingly slow' to produce results." *United States* v. *Sheffield Board of Commissioners*, 435 U.S. 110, 118 (1978). The purpose of Section 5 thus was to "shift[] the advantages of time and inertia from the perpetrators of the evil to its victims." 435 U.S. at 121. To abstain from deciding the Section 5 issues raised by this appeal pending disposition of the constitutional and Section 2 issues, however, would "place the advantages of time and inertia back on the perpetrators of the discrimination • • •." 435 U.S. at 125. In practical terms, we note that the next Edgefield County election is scheduled for the fall of 1984, to be preceded by the qualifying of candidates in March 1984 and primaries in June 1984. Accordingly, and in view of the fact that it is unlikely that the constitutional and statutory claims currently pending below will be finally decided substantially in advance of those dates, we suggest that the Court decide the preclearance issue promptly in order to avoid the possibility of an election's being conducted pursuant to procedures that have not been precleared and to afford appellees the opportunity to seek preclearance in advance of the next scheduled election, if necessary.

[3]Section 5 of the Voting Rights Act bars certain covered jurisdictions (including Edgefield County) from implementing any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" without obtaining preclearance from the Attorney General of the United States or the United States District Court for the District of Columbia. A jurisdiction requesting preclearance under Section 5 has the burden of demonstrating that the change in voting practice does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or language minority status. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); see also *City of Richmond* v. *United States*, 422 U.S. 358, 380-381 (1975) (Brennan, J., dissenting).

a. As of November 1, 1964, Edgefield County was governed by a three-member Board of Commissioners consisting of an elected supervisor of roads and two board members appointed by the Governor upon the recommendation of the county's state legislative delegation. In June of 1966, the state legislature enacted Act 1104, which created a three-member county council for Edgefield County with all three council members elected at-large from residency districts. It is undisputed that this Act was subject to the preclearance requirements of Section 5 but was never submitted for Section 5 review. J.S. App. 5a-6a.

In 1971, Act 1104 was amended by Act 521, "An Act To Amend Act 1104 Of 1966 * * * So As To Increase The Number Of Districts And The Number Of County Council Seats." As its title indicates, the Act increased both the number of residency districts in Edgefield County and the number of council members from three to five. J.S. App. 6a-7a, 10a. The Act was submitted to the Attorney General pursuant to Section 5 and, after requesting and receiving additional information, on November 24, 1971, the Assistant Attorney General for the Civil Rights Division advised that "[t]he Attorney General does not interpose any objections to the change in question." J.S. App. 43a.

b. In 1975, South Carolina enacted the Home Rule Act, S.C. Code Ann. § 4-9-10 *et seq.* (Law. Co-op. 1977). This Act transferred some powers from the state legislature to county officials and afforded each county the opportunity to hold a referendum by July 1, 1976, to determine whether to change its form of government to one of five alternative forms designated by the Act. The legislation further provided that if no referendum were held by July 1, 1976, the county would "have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date." By

letter of August 28, 1975, the Attorney General interposed no objection to the Home Rule Act as such, "but he indicated that the outcomes of Home Rule Act referenda or assignments of forms of government under the Act would be subject to preclearance." *Blanding* v. *Dubose*, 454 U.S. 393, 396 (1982).

Edgefield County did not hold the referendum provided for by the Home Rule Act, but instead passed a resolution and ordinance on June 21, 1976, adopting the council-administrator form of government, the form that the legislature previously had determined was most like that already in effect in the county. The resolution and ordinance were submitted to the Department of Justice for Section 5 preclearance. J.S. App. 8a. By letter dated February 8, 1979, the Attorney General interposed an objection to the resolution and ordinance, noting (*id.* at 30a) that while the council-administrator form of government provided for "ostensibly, the same system of election used by the county in electing its present council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act." After describing these differences and other considerations that influenced his decision, the Assistant Attorney General concluded (*id.* at 37a) that "on behalf of the Attorney General, I must interpose an objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County."

3. Appellants argued below that the county's use of the at-large electoral scheme should be enjoined because the 1966 Act, which initiated the scheme, had never been precleared under Section 5 and, alternatively, because the Attorney General had interposed a valid objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system in Edgefield County.

The district court rejected both arguments. It first held (J.S. App. 10a-13a) that although the 1966 Act itself had not been submitted for preclearance, the change to at-large elections embodied therein had received preclearance when the Attorney General subsequently failed to interpose an objection to the 1971 Act increasing the number of residency districts and council seats. The court found that because the Attorney General, in reviewing the 1971 Act, had requested additional information, including "*a copy of the election statute now in force*" (*id.* at 11a; emphasis by the court), his review had encompassed "all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966" (*id.* at 12a). The court further reasoned (*id.* at 13a) that the language of the 1971 Act — " 'striking out' " all the provisions of the 1966 Act relating to the form and method of election and replacing them with "completely new provisions" — provided an additional basis for inferring preclearance of the at-large features of the earlier Act.

The district court rejected appellants' alternative argument on the ground that the 1976 resolution and ordinance adopting the council-administrator form of government did not create a "change" subject to Section 5 preclearance. J.S. App. 14a-18a.[4] The court relied on *Woods* v. *Hamilton*, 473 F. Supp. 641 (D. S.C. 1979), to hold (J.S. App. 17a) that the Attorney General's [August 28, 1975] letter[5] "precleared

---

[4]The court held (J.S. App. 14a-16a) that appellees had standing to raise the question whether the resolution and ordinance produced a change notwithstanding the Attorney General's prior determination that they did.

[5]The district court erreously referred (J.S. App. 17a) to June 27, 1975, as the date of the Attorney General's letter preclearing some aspects of the Home Rule Act. South Carolina submitted the Home Rule Act for preclearance by letter dated June 27, 1975; the Attorney General's response was dated August 28, 1975. See *Woods* v. *Hamilton*, 473 F. Supp. 641, 645 (D.S.C. 1979).

both the holding of referenda and the transfer of powers under the Home Rule Act" and that "the June 21, 1976 resolution and ordinance resulted in no change in the form or method of electing [the] Edgefield County Council, and * * * are not a change subject to § 5 preclearance."

DISCUSSION

1. The decision of the three-judge court that the Attorney General precleared the 1966 change to at-large elections when he reviewed the 1971 Act increasing the number of residency districts and council members is error under this Court's consistent interpretation of Section 5. As the Court held in *United States* v. *Sheffield Board of Commissioners*, 435 U.S. 110, 136 (1978), "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." Contrary to the district court's conclusion, the 1966 change to at-large elections was never properly submitted or precleared by the Attorney General.

a. It is undisputed that the 1966 statute — Act 1104 —which provided for at-large elections, was never submitted to the Attorney General pursuant to Section 5. Rather, in 1971 Edgefield County submitted for Section 5 review Act 521, "An Act To Amend Act 1104 Of 1966 * * * So As To Increase The Number Of Districts And The Number Of County Council Members." As its title suggests, the sole purpose of the 1971 statute was to increase the number of residency districts and, accordingly, the size of the county council. The statute accomplished that end by adding new provisions of law and by striking out and re-enacting existing provisions of law, including the provision for at-large elections.

Neither the district court nor appellees suggest that the provision for at-large elections was specifically brought to

the Attorney General's attention in the context of the county's 1971 submission.[6] Nevertheless, the district court ruled that the technical re-enactment in the 1971 Act of the provision for at-large elections constituted a proper submission of that provision. That conclusion, however, cannot be squared with this Court's admonition in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), that a submission must request the Attorney General's consideration in "some unambiguous and recordable manner" (*id.* at 571):

> [W]e do not think the Act contemplates that a "submission" occurs when the Attorney General merely becomes aware of the legislation, no matter in what manner. * * * A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

See also *City of Rome* v. *United States*, 446 U.S. 156, 169-170 n.6 (1980). When a jurisdiction adopts legislation that makes a clearly defined change in its form of government and that also reenacts pre-existing provisions of law, the mere submission of a copy of that legislation cannot constitute an "unambiguous" request for Section 5 review of those provisions that do not purport to change the law, since they presumably are not subject to Section 5 review.

This conclusion is fully supported by guidelines that the Attorney General has adopted specifying submission procedures, which this Court has held are entitled to deference. See *Blanding* v. *Dubose*, 454 U.S. 393, 401 (1982); *United*

---

[6] Neither side to these proceedings was able to locate the actual letter submitting the 1971 statute for preclearance and, hence, it is not a part of the record of this case. We have found a copy of the letter in our files and are attaching it as an appendix hereto (H2206 was the South Carolina House bill number of Act 521 of 1971).

States v. *Sheffield Board of Commissioners, supra,* 435 U.S. at 138. The version of the guidelines that was in effect prior to the completion of the county's 1971 submission required that a submission "clearly set forth" the voting change in a manner "adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting." 28 C.F.R. 51.5, 51.10(a)(4) (1980).[7] Since the only differences specifically called to the attention of the Attorney General were the changes in the number of residency districts and the size of the council, he was entitled to conclude that the submission was limited to the changes in law reflected in the Act's stated purpose. See *United States* v. *Sheffield Board of Commissioners, supra,* 435 U.S. at 137-138.

The district court's reliance (J.S. App. 10a-12a) on the Attorney General's routine request (see 28 C.F.R. 51.18 (1980)) for more information following his receipt of the

---

[7]The guidelines (28 C.F.R. 51.10(b) (1980)) also

> strongly urge[d] the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:
>
> • • • • •
>
> (4) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. • • •

Proposed guidelines were published for comment before Edgefield County made its initial submission of the 1971 Act (36 Fed. Reg. 9781 *et seq.* (May 28, 1971)) and were published in final form (36 Fed. Reg. 18186 *et seq.* (Sept. 10, 1971)) several days before the submission was complete. Even though the final version of the guidelines were not in effect when the 1971 Act was initially submitted, Edgefield County thus was on notice of the kind of information and explanation the Attorney General deemed necessary to identify changes that were not readily apparent from the face of the legislation and that the duty to provide this information rested with the covered jurisdiction.

county's 1971 submission also is misplaced. As the court below noted (J.S. App. 11a), the Attorney General specifically requested "a copy of the election statute now in force," and received a copy of the 1966 Act, which provided for the at-large election of county council members. He thus "had the 1966 Act before him and was aware that the form and method of election of the Edgefield County Council then in effect had been adopted in 1966" (*id.* at 12a). But, if anything, this information confirmed what was apparent on the face of the 1971 statute — that the voting change then being submitted was a change only in the *number* of residency districts and, hence, only in the *size* of the county council. As noted above (pages 8-9, *supra*), however, merely making the Attorney General aware of legislation enacted after the effective date of Section 5 coverage does not constitute an adequate submission. This is especially true where, as here, the jurisdiction does not even inform the Attorney General that the earlier statute was subject to Section 5 and had never received preclearance. As the Court noted in *United States* v. *Sheffield Board of Commissioners, supra,* 435 U.S. at 138 n.28, the burden of submission rests with the jurisdiction, and the "Attorney General should [not] be charged with notice of all provisions of local law." The Attorney General thus was entitled to presume that the at-large method of election was validly in force and therefore was not subject to review at the time the 1971 Act was submitted.

b. The district court also erred in concluding that the Attorney General in fact evaluated and therefore precleared the change to at-large voting when he reviewed the 1971 Act. The court inferred (J.S. App. 12a) that the Attorney General's review of the 1971 Act "encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966" because he was provided with a copy of the existing election

law as well as information concerning previous candidates, election results, and residency district boundaries. In the absence of clear evidence, however, it cannot properly be concluded that the Attorney General considered and precleared anything other than the particular change that was submitted to him for review, that is, the 1971 changes in the number of residency districts and size of the county council. See *United States* v. *Sheffield Board of Commissioners, supra,* 435 U.S. at 137-138.

The November 24, 1971 letter of preclearance refers only to the 1971 Act (J.S. App. 43a-44a). Moreover, while the information the Attorney General requested and received concerning the 1966 Act and its application was sufficient to enable him to make the determination whether the new residency district lines were drawn in a non-discriminatory manner, if he had intended to review the at-large aspect of the voting scheme he would have needed, in addition, information concerning the *pre*-1966 method of election, in order to determine whether the change from the appointive system that was in effect on November 1, 1964, to the at-large electoral system that was inaugurated in 1966 had a discriminatory purpose or effect. The Attorney General neither requested nor received any such information, and he therefore was in no position to evaluate or preclear the at-large feature encompassed in the 1971 Act.

Furthermore, the Attorney General himself did not consider the at-large feature of the 1966 Act to have been precleared. In a December 12, 1980 letter he advised state officials that the 1966 Act had never been submitted or precleared (J.S. App. 40a-42a). In these circumstances, the district court erred in concluding that the Attorney General

in fact had evaluated and precleared the change to at-large elections.[8]

2. Appellants also contend (J.S. 20) that the district court "held that the reallocation or transfer of powers from state elected officials to the Edgefield County Council under statewide home rule in 1976 was not a voting change subject to pre-clearance" and that that decision conflicts with *Horry County* v. *United States*, 449 F. Supp. 990 (D.D.C. 1978). Contrary to appellants' assertion (J.S. 20), however, neither the court below nor any other court of which we are aware has held that such a transfer of powers is

---

[8]This case is distinguishable from *United States* v. *Georgia*, Civil Action No. C76-1531A (N.D. Ga. Sept. 30, 1977), summarily aff'd, 436 U.S. 941 (1978). There, the district court dismissed a suit brought by the United States to compel Georgia to submit for preclearance two provisions of its 1964 Election Code on the ground that, "[i]n the absence of any requirement that a specific submission procedure be followed," Georgia had complied with the submission requirements of *Allen* v. *State Board of Elections*, *supra*, when, in 1970, it requested the Attorney General to review the entire state election code, which included the two 1964 voting changes. *United States* v. *Georgia*, No. 77-1376 (1977 Term) J.S. App. 11a. In so holding, the court relied heavily (*id.* at 11a-12a) on a March 30, 1973 letter from the Assistant Attorney General, Civil Rights Division, that stated that one of the two changes had been precleared in 1970 and on a decision of the Fifth Circuit, *Pitts* v. *Cates*, 536 F.2d 56 (1976), that indicated that the other change also had been precleared (536 F.2d at 57).

Here, by contrast, there is no finding that appellees, by their 1971 submission, sought review of *all* of the provisions of Act 521. Nor is there any direct evidence, like the letter in *United States* v. *Georgia*, indicating that the Attorney General in fact precleared the 1966 change to at-large elections. To the contrary, the Attorney General's letter of December 12, 1980, correctly advised South Carolina officials that the 1966 Act had never been submitted to the Attorney General or the District Court for the District of Columbia for preclearance (J.S. App. 40a-42a). Moreover, the appellees in this case had the benefit of regulations promulgated by the Attorney General to aid them in formulating an unambiguous request for preclearance of the change to an at-large electoral scheme.

not a change in voting procedures within the meaning of Section 5. Rather, the district court, following the decision in *Woods* v. *Hamilton*, 473 F. Supp. 641, 644-647 (D.S.C. 1979), simply concluded (J.S. App. 17a) that the Attorney General had precleared the transfer of powers provided for by the Home Rule Act when that legislation was submitted for preclearance in 1975 (see note 10, *infra*). This treatment of the transfer of powers issue is fully consistent with the conclusion of the court in *Horry County*, *supra*, 449 F. Supp. at 995, that the reallocation of local governmental power occasioned by the Home Rule Act and the county's implementing ordinance constituted a change subject to Section 5 review.[9] Appellants thus have not identified a conflict of decisions or additional issue requiring resolution by this Court.[10]

---

[9]The *Horry County* court did not consider whether the Attorney General had precleared the transfer of powers feature of the Home Rule Act when that Act was submitted to him in 1975.

[10]This case raises the question, however, of whether the Attorney General in fact precleared the transfer of powers feature of the Home Rule Act when it was submitted to him in 1975 since, if he did not, Edgefield County's 1976 resolution and ordinance implementing that transfer of powers was a change in voting requiring preclearance under *Horry County* v. *United States*, *supra*.

In *Woods* v. *Hamilton*, *supra*, in which private plaintiffs and the United States sought to enjoin officials of Charleston County, South Carolina, from implementing the Home Rule Act in that county, we took the position that the Attorney General had not precleared the transfer of powers feature of the Home Rule Act that was submitted to him in 1975. We argued that the Attorney General had precleared only the holding of referenda to determine whether to change the form of local government (see page 4, *supra*), while reserving the right to review each county's subsequent implementation of all other aspects of the Home Rule Act. The court ruled against us in *Woods* v. *Hamilton*, however, holding (473 F. Supp. at 644-647) that the entire Home Rule Act had been submitted to the Attorney General for preclearance in 1975, and that when he expressly precleared some features of it and expressly reserved the right to object to others, his failure specifically to

CONCLUSION

For the foregoing reasons, we believe the judgment of the district court should be reversed and the case remanded to afford Edgefield County an opportunity to seek preclearance of the change to at-large elections. It may be, however, that plenary consideration is unnecessary. In our view, the decision regarding preclearance of the change to at-large voting is so plainly erroneous in light of this Court's decisions in *Allen* v. *State Board of Elections, supra,* and *United States* v. *Sheffield Board of Commissioners, supra,* and the Attorney General's Section 5 guidelines as to justify summary reversal.

Respectfully submitted.

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

JESSICA DUNSAY SILVER
JAMES W. CLUTE
Attorneys

FEBRUARY 1983

---

mention the transfer of powers constituted preclearance of that feature as well.

We did not appeal from the decision in *Woods* v. *Hamilton*. Accordingly, we are estopped from relitigating the question whether the Attorney General in fact precleared the transfer of powers feature of home rule in 1975. Because appellants were not parties to the proceedings in *Woods* v. *Hamilton*, they are free to present that question for review. We note, however, that the Court need not reach that issue if it agrees with appellants and us (pages 7-11, *supra*) that the Attorney General's failure to object to the 1971 Act did not constitute preclearance of the previous change to at-large elections. In that event, the basis for the district court's conclusion that the 1976 resolution and ordinance was not a change in voting — that the form and method of electing the county council mandated by it already had been precleared (see J.S. App. 17a) — would be eliminated.

APPENDIX

STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211

July 21, 1971

DANIEL R. MCLEOD
ATTORNEY GENERAL

ASSISTANT ATTORNEYS GENERAL

JOSEPH C. COLEMAN
E. N. BRANDON
VICTOR S. EVNAS
C. TOLBERT GOOLSBY, JR.
ROBERT W. BROWN
RAYMOND G. HALFORD
IRVIN D. PARKER
EMMET H. CLAIR
R. EVAN PALMER
JOEL E. GOTTLIEB
JOHN P. WILSON
JAMES H. QUACKENBUSH, JR.
ALEXANDER S. MACAULAY
TIMOTHY G. QUINN
HUBBARD W. MCDONALD, JR.
JOSEPH C. GOOD, JR.
EDWIN B. BRADING

ASSISTANT ATTORNEYS GENERAL

JOE L. ALLEN, JR.
G. LEWIS ARGOE, JR.
S.C. TAX COMMISSION

CHARLES A. TAYLOR, III
S. C. INDUSTRIAL COMMISSION

EDWARD B. LATIMER
S. C. WILDLIFE COMMISSION

WILLIAM F. AUSTIN
PUBLIC SERVICE COMMISSION

MRS. SADYE B. DAVIS
ADMINISTRATIVE ASSISTANT

CERTIFIED MAIL

Honorable David L. Norman
Acting Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Re: Submission under Section 5, Voting Rights Act

Dear Mr. Norman:

In accordance with the provisions of Section 5 of the Voting Rights Act of 1965, there are submitted herewith copies of the following listed acts, which have been passed by the General Assembly of the State of South Carolina, and approved by the Governor during the current session.

RATIFICATION NO.	ACT NO.	DATE APPROVED
R446	H1835	June 1, 1971
R464	H1396	June 2, 1971
R516	H2007	June 4, 1971
R530	H2036	June 8, 1971
R609	H1080	June 17, 1971
R611	H1910	June 17, 1971
R630	S511	June 22, 1971
R674	H1896	June 22, 1971
R682	H1768	"
R689	H2162	"
R694	S567	June 25, 1971
R705	H2229	"
R718	H2184	"
R720	H2198	"
R722	H2206	"
R730	H2110	"
R757	H2209	"
R758	H2228	"

Very truly yours,

James H. Quackenbush, Jr.
Assistant Attorney General

JHQ/mn
Enclosures

NO. 82-282

Office-Supreme Court, U.S.
FILED
AUG 6 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1982

THOMAS C. McCain and WILLIAM SPENCER, individually and on behalf of all those similarly situated,

Appellants,

vs.

CHARLES E. LYBRAND, GENE HUIET, HENRY M. HERLONG, ROY A. HARLING, and W.T. TIMMERMAN, individually and as members of the County Council of Edgefield County; NORMAN DORN, JOHN S. EDWARDS, and Richard A. Beals, individually and as members of the Board of Election Commissioners of Edgefield County, S.C.; and J.M. PENDARVIS, individually and as President of the Executive Committee of the Democratic Party of Edgefield County,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

APPELLANTS' BRIEF ON THE MERITS

ARMAND DERFNER
5520 33RD STREET, NW
WASHINGTON, DC 20015

HERBERT E. BUHL, III
533-A HARDEN STREET
COLUMBIA, SC 29205

LAUGHLIN McDONALD*
NEIL BRADLEY
CHRISTOPHER COATES
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
52 FAIRLIE STREET, NW
ATLANTA, GA. 30303-2188
(404) 523-2721
ATTORNEYS FOR APPELLANTS
* COUNSEL OF RECORD

QUESTIONS PRESENTED

1. Whether the district court erred in ruling that at-large elections adopted in 1966 for the Edgefield, South Carolina County Council had been pre-cleared pursuant to §5 of the Voting Rights Act of 1965, where the Attorney General informed State officials that the 1966 change had never been submitted or pre-cleared?

2. Whether pre-clearance under §5 of a 1971 submission expressly limited to an increase in size of the Council from three to five members, resulted in pre-clearance sub silentio of at-large elections adopted in 1966, where the submission contained no information to suggest to the Attorney General that the 1966 use of at-large voting was a change from any prior practice, and where the

Attorney General informed State officials that the 1966 change had never been submitted or precleared?

3. Whether a transfer of powers from State to Edgefield County elected officials pursuant to implementation of statewide home rule in 1966 is a voting change subject to pre-clearance under §5?

TABLE OF CONTENTS

	Page(s)
Questions Presented	i
Table of Authorities	v
Opinion Below	1
Jurisdiction of the Court	1
Statutory Provisions Involved	2
Statement of Facts	2
The Three Statutes	5
A. The 1966 Statute -- Act No. 1104	5
B. The 1971 Statute -- Act No. 521	8
C. The 1976 Home Rule Ordinance .	12
D. The Disclosure that the 1966 Act Had Never Been Submitted.	16
Statement of the Case	18
Summary of Argument	31
Argument	35
I. The 1966 Change in Form of Government and the Adoption of At-Large Elections for the Edgefield County Council Has Never Been Submitted for §5 Review and Has Never Been Precleared	**35**

Page(s)

A. The Attorney General Ruled That the 1966 Act Has Never Been Precleared, A Decision Which Is Entitled to Deference 37

1. The Ruling by the Attorney General in This Case Is Entirely Consistent with the Attorney General's Regulations for the Administration of §5 41

B. The 1966 Act Was Never Submitted for Preclearance 43

C. Neither Congress Nor This Court Has Authorized Constructive Preclearance of Voting Changes . 49

D. The Lower Court Improperly Held That the 1966 Act Was Precleared in the Context of the 1971 Act, Rather Than by Reference to the Practice in Effect in Edgefield County on November 1, 1964 . . . 51

II. The 1976 Implementation of Home Rule 54

A. The Implementation of At-Large Elections in the Context of Home Rule in Edgefield County Was a Continuing §5 Violation 54

B. The Attorney General's Objection to 1976 Home Rule Should Be Enforced 56

III. The Opinion Below Is Contrary To Congressional Policy in Enacting the Voting Rights Act . 60

Conclusion 65

TABLE OF AUTHORITIES

Cases:	Page(s)
Allen v. State Board of Elections, 393 U.S. 544 (1969)	32, 44, 45, 47, 62
Beer v. United States, 425 U.S. 130 (1975)	63
Berry v. Doles, 438 U.S. 190 (1978)	34, 55
Blanding v. DuBose, 509 F.Supp. 1334 (D.S.C. 1981)	6
Blanding v. DuBose, 454 U.S. 393 (1982)	6, 36, 40, 41, 43
City of Lockhart v. United States, ___ U.S. ___, 103 S.Ct. 998 (1983)	33, 52, 63
City of Mobile v. Bolden, 446 U.S. 55 (1980)	22, 47
City of Rome v. United States, 446 U.S. 156 (1980)	32, 34, 47, 60
Dallas County, Alabama v. Reese, 421 U.S. 477 (1975)	4
Dougherty County v. White, 349 U.S. 32 (1978)	62
Georgia v. United States, 411 U.S. 526 (1973)	41
Hathorn v. Lovorn, 457 U.S. 255, 102 S.Ct. 2421 (1982)	52, 58, 60
Horry County v. United States, 449 F.Supp. 990 (D.D.C. 1978)	36, 57

Cases, cont'd. Page(s)

Lytle v. Commissioners of Election of Union County, 376 F.Supp. 304 (D.S.C. 1974) 4

Lytle v. Commissioners of Election of Union County, 509 F.2d 1049 (4th Cir. 1974) 4

McCain v. Edwards, 272 S.C. 539, 252 S.E. 2d 924 (1979) 14

McCain v. Lybrand, 419 U.S. 1032 419 U.S. 1032 (1974) 4

Morris v. Gressette, 432 U.S. 491 (1971) 29

Perkins v. Matthews, 400 U.S. 379 (1971) 52, 56

Pitts v. Cates, 536 F.2d 56 (5th Cir. 1976) 40

Rogers v. Lodge, ___ U.S. ___, 102 S.Ct. 3272 (1982) 23

South Carolina v. Katzenbach, 383 U.S. 301 (1966) 34, 35 51, 60

In re Thomas C. McCain and William Spencer, No. 81-1665 (4th Cir. August 5, 1981) 24

United States v. Board of Commissioners of Sheffield, Ala., 430 F.Supp. 786 (N.D. Ala. 1976) . 50 56, 62

United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978) . . . . . passim

Cases, cont'd.	Page(s)
United States v. Georgia, Civ. No. C76-1531A (N.D. Ga. Sept. 30, 1977), aff'd, 436 U.S. 941 (1978)	40
Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979)	56 57, 58

Constitutional Provisions:

Fifteenth Amendment	3
First Amendment	3
Fourteenth Amendment	3
Thirteenth Amendment	3

Statutory Provisions

28 U.S.C. §144	24
28 U.S.C. §455(a)	24
28 U.S.C. §1253	2
28 U.S.C. §2284	1
42 U.S.C. §1971	4
42 U.S.C. §1973	4, 23
42 U.S.C. §1973b(a)	7
42 U.S.C. §1973b(b)	7
42 U.S.C. §1973	passim

Statutory Provisions, cont'd. Page(s)

42 U.S.C. §1983 4

Code of Laws of South Carolina, 1976, as amended §4-9-10 . . . . . 12, 13

South Carolina Act No. 1104 of 1966 . . . . . passim

South Carolina Act No. 521 of 1971 . . . . . passim

Other:

111 Cong. Rec. S19374 (daily ed., Aug. 4, 1965) 24

House Report No. 91-373, 91st Cong., 2d Sess. (1970), 2 U.S. Cong. & Admin. News 61

House Report No. 94-196, 94th Cong., 1st Sess. (1975) 61

Senate Report No. 94-295, 94th Cong., Cong., 1st Sess. (1975) 61

Senate Report No. 97-417, 97th Cong., 2d Sess. (1982) 61

28 C.F.R., Part 51 . . . . . .35, 35, 42

28 C.F.R. §51.10(a)(4) 42

28 C.F.R. §51.12(i) 36

28 C.F.R. §51.14 59

28 C.F.R. §51.25 43

28 C.F.R. §51.5 42

OPINION BELOW

The opinion of the three-judge court of the United States District Court for the District of South Carolina to be reviewed is unreported, and is contained in the Jurisdictional Statement Appendix ("Juris. S.A.") at 1a.

JURISDICTION OF THE COURT

This is an appeal from a decision of a three-judge district court convened pursuant to §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c and 28 U.S.C. §2284. The decree sought to be reviewed was entered on May 10, 1982. The notice of appeal was filed in the United States District Court for the District of South Carolina on June 7, 1982. Juris. S.A. 23a. Jurisdiction of this appeal is conferred on this Court by 42 U.S.C.

§1973c and 28 U.S.C. §1253.

STATUTORY PROVISION INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c. The statute is set out in full in the Juris. S. A. at 25a.

STATEMENT OF FACTS

Edgefield County, South Carolina, is a small county on the Georgia line opposite the City of Augusta. Its population is 15,690, of whom 52% are black and 48% are white. Blacks, however, are a minority of the voting age population. J.A. 44.[1] Despite the large black population, no black person has ever been elected to the County Council--the principal governing body. J.A. 74.

---

1. "J.A." refers to the Joint Appendix.

Appellants are black registered voters of Edgefield County, South Carolina, who seek to enforce §5 of the Voting Rights Act, 42 U.S.C. §1973c, and to require preclearance of at-large elections by the Edgefield County Council. The Appellees are the members of the Edgefield County Council and the Edgefield County Board of Election Commissioners, as well as the President of the Edgefield County Democratic Executive Committee. Juris. S.A. 2a.

The suit which gives rise to this appeal was filed on February 26, 1974. The original complaint alleged that the use of at-large elections to elect members of the Edgefield County Council diluted the votes of black voters, in violation of the First, Thirteenth, Fourteenth and Fifteenth amendments of the Constitution of the United States, and 42

U.S.C. §§ 1971, 1973, and 1983. J.A.1.[2] Subsequently, by orders entered November 24, 1980, and January 6, 1981, the complaint was supplemented to raise the claim that the at-large elections being used by Edgefield County have never been precleared pursuant to §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, and must therefore be enjoined as illegal. J.A. 90, 102, 110, 119.

---

2. The original complaint also alleged that the residential districts used for the at-large elections were malapportioned. Although the district court granted summary judgment to plaintiffs on this claim, that judgment was reversed by the court of appeals and this Court denied certiorari. See McCain v. Lybrand decided sub nom. Lytle v. Commissioners of Election of Union County, 376 F.Supp. 304 (D.S.C. 1974), rev'd, 509 F.2d 1049 (4th Cir. 1974), cert. denied sub nom. McCain v. Lybrand, 419 U.S. 1032 (1974). Following this Court's decision in Dallas County v. Reese, 421 U.S. 477 (1975), the malapportionment issue was eliminated from the instant case by a summary judgment for the Appellees.

Although this case has seen many proceedings, this appeal involves only the issue of preclearance under §5 of the Voting Rights Act. The facts relating to that issue center on three statutes, passed in 1966, 1971, and 1976, dealing with the county government of Edgefield County. The essential facts deal not only with the substance of those statutes but with their treatment under §5.

THE THREE STATUTES

A. The 1966 Statute--Act No. 1104.

Prior to November 1, 1964, the government of Edgefield County, known as the Board of County Commissioners, consisted of two Commissioners appointed by the Governor upon the recommendation of the members of the South Carolina General Assembly from the county, and the elected County Supervisor of Roads. The Board

had limited administrative duties, as well as general jurisdiction over roads and bridges. The principal powers, however, were retained by the members of the General Assembly from Edgefield County. J.A. 129-30, 142-53. And see Blanding v. DuBose, 509 F.Supp. 1334, 1335 (D.S.C. 1981), rev., 454 U.S. 393 (1982).

On June 1, 1966, the South Carolina General Assembly enacted Act No. 1104 abolishing the offices of County Commissioner and County Supervisor and creating the Edgefield County Council. The Council consisted of three members elected for terms of two years, with one member from each of three designated residency districts elected by plurality vote from the county at-large. J.A. 154-66. Act No. 1104 conferred the powers of home rule upon the Council and empowered it (unlike the former Board of Commissioners), among

other things, to buy or sell property, to exercise the powers of eminent domain, to make appropriations and levy taxes, to provide necessary county services, to receive and disburse funds, to incur indebtedness, to issue bonds, to prescribe methods of accounting for county officers and to employ county employees. Id., 142-53.

Edgefield County is a political subdivision subject to the prohibitions of the Voting Rights Act of 1965, 42 U.S.C. §1973b(a), pursuant to the certification of the Attorney General of the United States under 42 U.S.C. §1973b(b). Juris. S.A. 6a; 28 C.F.R. Part 55. Act No. 1104 was a voting qualification or prerequisite to voting, or standard, practice or procedure different from that in force or effect in Edgefield County on November 1, 1964, within the meaning of §5. Id.;

J.A. 131.

As Appellees have stipulated, despite the fact that Act No. 1104 was a covered voting change, it was never submitted to the Department of Justice for preclearance or judicially reviewed by the District Court for the District of Columbia. J.A. 131; Juris. S.A. 6a.[3]

B. The 1971 Statute--Act No. 521.

Sections 1 and 3 of Act No. 1104 were amended on June 25, 1971, by Act No. 521. J.A. 167-70. The only change made by Act No. 521 was to increase the membership of the Council and the number of residential districts from three to five.[4] There was no change in any of the

---

3. As appears infra at 16, the failure to preclear the 1966 Act was not disclosed until 1980.

4. Act No. 521 was entitled: "An Act to Amend Act 1104 of 1966, as Amended, FOOTNOTE CONTINUED ON NEXT PAGE....

powers of the Council, nor in the use of plurality vote and at-large elections. Id.

Act No. 521 was submitted to the Attorney General pursuant to §5 on July 21, 1971, along with 17 other pieces of legislation.[5] The July 21, 1971, letter merely listed the acts submitted by ratification and act number and date approved. It contained no further information of any kind.

FOOTNOTE CONT'd...Relating To A System Of County Government For Edgefield County, So As To Increase The Number Of Districts And The Number Of County Council Members." J.A. 167.

5. A copy of the submission letter, which the parties had been unable to locate during the district court proceedings, was included in the appendix to the Brief for the United States As Amicus Curiae, 1a-2a. Act No. 521 is identified in the letter as H2206, the bill number in the House of Representatives of South Carolina. Although the letter is not part of the certified record, the district court entered an order on March 10, 1981, directing the Appellees to produce any subsequently discovered documents relating to the possible submission of Act No. 1104
FOOTNOTE CONTINUED ON NEXT PAGE...

On September 14, 1971, David Norman, Assistant Attorney General, wrote to James H. Quackenbush, Assistant Attorney General of South Carolina, requesting additional information in connection with the submission of Act No. 521 (H2206). J.A. 237-40. Mr. Norman asked for: "maps showing the boundaries of the County Council election districts under the existing statute as well as under H2206"; "population and registration statistics, by race, for the present election districts and the proposed election districts as well as a copy of the election statute now in force"; and, "the names, and race, of all candidates for County Council in the last two primary and general elections, and the results of these elections by

---

FOOTNOTE CONT'd....of 1966. J.A. 127. The July letter falls within the category of documents described in the order and required to be produced.

districts." Id.

On September 24, 1971, Mr. Quackenbush forwarded the following additional information to the Attorney General: maps showing the boundaries of the County Council election districts under Act No. 1104 and Act No. 521 (H2206); registration statistics by race for the present and proposed election districts; a copy of Act 521; a copy of the first page of Act No. 1104 describing the existing three election districts; and, the names of candidates in the 1968 and 1970 primary and general elections and the results of the elections by district. J.A. 244-48. Population figures which had been requested for the existing and proposed election districts were not available. Id.

A month later, on November 24, 1971, the Attorney General precleared the increase in the size of the County Council.

The clearance letter provided simply that: "The Attorney General does not interpose any objections to the change in question." Juris. S.A. 43a.[6]

C. The 1976 Home Rule Ordinance

In 1975 the General Assembly of South Carolina enacted the Home Rule Act, §4-9-10 et seq., Code of Laws of South Carolina, 1976, as amended. The Home Rule law authorized five alternative forms of elected county government, and provided

---

6. Act No. 1104 was also amended in 1967 by Act No. 55 to make it permissible for the County Council to hire a county administrator; in 1968 by Act No. 1318 to provide that Council votes be matters of public record; and in 1974 by Act No. 1042 setting a ceiling on salaries of council members, allowing the Council to make recommendations and appointments to boards and commissions and make recommendations concerning the farm to market program. J.A. 171-82. None of these acts is involved in this litigation.

that "each county...may prior to July 1, 1976, conduct a referendum to determine the wishes of the qualified voters as to the form of government to be selected...." §4-9-10(a). In the event no referendum were held, the legislation further provided that the county would have the form of government, including the method of election, "most nearly corresponding to the form in effect in the county immediately prior to that date," §4-9-10(b), which, in the case of Edgefield County, the General Assembly determined to be the council-administrator form. J.A. 133-35.

Referenda could be called under the Home Rule Act by the General Assembly, a resolution of the governing body or upon petition by not less than ten percent of the registered electors of the county. §4-9-10(a). There was substantial support for a referendum in Edgefield County among

the black voters who strongly favored the adoption of a single member district system of election, Juris. S.A. 36a, but even though they filed enough signatures to require a referendum, the County Council refused to call one and was upheld by the South Carolina Supreme Court. See McCain v. Edwards, 272 S.C. 539, 252 S.E. 2d 924 (1979).

Instead, on June 21, 1976, the County Council adopted by resolution and ordinance the council-administrator form of government, with at-large elections and residence requirements. J.A. 183-87. The resolution and ordinance were not initially submitted for preclearance under the Voting Rights Act, but after the Attorney General wrote in August and September 1978, requesting the submission, the County finally submitted the 1976 ordinance in 1978. J.A. 135-36.

On February 8, 1979, the Attorney General interposed an objection "to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County." Juris. S.A. 37a. In concluding that the county had failed to meet its burden of proof, the Attorney General analyzed both the effects of the election system, and the process by which home rule had been adopted. He emphasized that home rule had been originally conceived and presented as a significant transfer of power in a process that called for "the full and active participation of the electorate in selecting the type of government and the method of election through referenda called by the county council, the legislature...or... 10% of the registered electorate." Juris. S.A. 33a. In contrast, the Attorney

General noted, "the promise of public participation in the selection of the form of government and method of election under home rule has simply not been realized in Edgefield County." Juris. S.A. 36a.

Although the Attorney General's objection was followed by meetings, discussions, and consideration of plans for compliance, the County Council never complied with the objection. J.A. 189, 191, 195, 216.

D. The Disclosure That The 1966 Act Had Never Been Submitted.

On December 9, 1980, the Department of Justice notified the State of South Carolina that "[a] thorough investigation of our files and records has led us to conclude that this act [Act No. 1104 of 1966] was never submitted either to the United States District Court for the District of Columbia for judicial review

or to the Attorney General for administrative review as required by Section 5." Juris. S.A. 40a. The State was advised "it is necessary that this Act either be brought before the District Court for the District of Columbia or submitted to the Attorney General." 41a.

Appellees' failure to submit the 1966 Act establishing at-large elections for the County Council was not disclosed to Appellants until the "please submit" letter from the Department of Justice. Indeed, the county had previously taken the position that the 1966 legislation had in fact been precleared. In his letter of September 29, 1978 submitting Edgefield's implementation of home rule, the county attorney represented that the 1966 Act had been submitted and precleared by the Department of Justice:

> I am enclosing herewith an act of 1966 establishing the Edgefield County Council and amendments thereto in their chronological order, all of which have been approved by the Justice Department.

See J.A. 212-15. Appellees later stipulated that the 1966 Act had never been submitted nor precleared. J.A. 131.

STATEMENT OF THE CASE

The proceedings that resulted in this appeal were triggered by the Attorney General's 1980 letter requesting submission of Act No. 1104 of 1966, and by Edgefield County's failure to comply with the Attorney General's 1979 objection to the Home Rule ordinance.

This case had already been active even before these events. In 1975, there had been a major trial on Appellants' claims that the at-large elections diluted their votes on account of race.

On April 17, 1980, the district court ruled for Appellants on their dilution claim,[7] concluding that "the rights of the blacks to due process and equal protection of the law in connection with their voting rights have and continue to be unconstitutionally infringed." The district court's findings were detailed and comprehensive. J.A. 75.[8]

---

7. The court explained the long delay between trial and issuance of the opinion on the grounds that it "was advised the South Carolina Legislature would adopt a new plan for Edgefield County." J.A. 36. Although the court did not elaborate, it was obviously referring to the implementation of home rule in Edgefield County.

8. The court found:

*A history of discrimination against blacks in registering and voting: "At the time of the passage of the Voting Rights Act in 1965 less than 20% of the voting age blacks of Edgefield County were registered." J.A. 46-7.

*Blacks were excluded from participating in Democratic Party affairs until 1947, and even then "blacks in Edgefield County found it very difficult to register

FOOTNOTE CONTINUED ON NEXT PAGE...

FOOTNOTE CONT'd...and threats were made against some blacks who did register." J.A. 47.

*Even though blacks were a majority of the population--but less than a majority of eligible or registered voters--no black had ever been elected to the County Council. J.A. 44-5, 74.

*"Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible.... The Court's overall finding is that blacks were virtually totally excluded up to 1970, and that since that time they have progressed to minimal tokenism." J.A. 49-50.

*"Examination of the election results shows an extraordinarily high correlation in every election between the votes received by a black candidate and the racial composition of the precinct.... There is bloc voting by the whites on a scale that this court has never before observed....whites absolutely refuse to vote for a black." J.A. 54-5, 71, 73.

*"Blacks were historically excluded from jury service in Edgefield County. As late as 1968 and 1970, the grand jury had no blacks at all, while the trial jury venires in those years had few blacks. It was not until suit was brought in 1971 that the jury list was reconstituted to include blacks fairly." J.A. 60.

*"The Edgefield County Council historically kept the county chain gang
FOOTNOTE CONTINUED ON NEXT PAGE...

FOOTNOTE CONT'd...segregated by race, until a suit was brought in 1971." Id.

*"Blacks have been excluded from county employment by the County Council, even up to the present. No current black employee began service before 1971. Until the very eve of trial in this case, black employment was negligible. It was only when trial was about to begin that the county suddenly began hiring blacks in any numbers...in addition, blacks are heavily concentrated at the lower wage levels. Of the last minute hires, none of the 11 blacks earns more than $5,460." J.A. 60-1.

*"Blacks have been excluded by the County Council in appointments to county boards and commissions." J.A. 61.

*"The public schools of Edgefield County were historically segregated by race....It was not until September, 1970 that any appreciable amount of desegregation took place, under a plan finally approved by the U.S. Department of HEW." J.A. 63-4.

*Even after desegregation, the school board maintained the racially discriminatory character of the schools. "Under the school board's 1970 plan, Strom Thurmond High, the formerly white school, was designated the high school for all students. It kept 'Confederate Rebel,' and 'Dixie' as the school nickname and school song, and kept the use of the Confederate Flag as the school symbol at athletic and other events." J.A. 64. After blacks complained, the "school board promptly resolved that 'the existing traditions now in force in all schools of the system will continue,'
FOOTNOTE CONTINUED ON NEXT PAGE...

Five days after the district court's order, this Court decided City of Mobile v. Bolden, 446 U.S. 55 (1980). The Appellees then moved to alter, amend or vacate the district court's April 17, 1980 Order, and the motion was granted on August 11, 1980. J.A. 84-9. The district court made no new

---

FOOTNOTE CONT'd...and secured an ex parte injunction against blacks' gathering or demonstrating against the school policies. Blacks affected by the injunction were never able to obtain a hearing on their motion to dissolve the ex parte injunction, which led this court to vacate it. McCain v. Abel, CA No. 70-1057 (D.S.C. 1973)." J.A. 65.

*"Blacks in Edgefield County have a much lower socio-economic status than do whites. Blacks as a group have smaller incomes, less education and fewer employment opportunities." Id.

*"There is still a long history of racial discrimination in all areas of life." J.A. 71.

*"The County Council has not been responsive to the needs of black citizens, even though they make up a majority of the population of the county." J.A. 73.

evidentiary rulings but held that its findings did not add up to proof of discriminatory intent under Mobile. The district court offered the parties the opportunity to submit additional evidence on the intent issue, and set the case for rehearing.[9]

While these proceedings were taking place on the dilution claim, Appellants supplemented the complaint twice. On November 24, 1980, the complaint was supplemented with a §5 claim seeking to enforce the 1979 objection to the home rule ordinance, J.A. 90, 102; on January 6, 1981,

---

9. Following the decision in Rogers v. Lodge, ___ U.S. ___, 102 S.Ct. 3272 (1982), and the amendment of §2 of the Voting Rights Act, 42 U.S.C. §1973, Appellants moved the district court to reinstate its April 17, 1980, Order. A hearing was held on November 5, 1982, and the motion was taken under advisement. Those constitutional and §2 issues are still pending in the district court and are not before this Court.

following disclosure of the fact that Act No. 1104 had never been pre-cleared, the complaint was further supplemented with a §5 claim based on the 1966 statute. J.A. 110, 119.[10]

A three-judge district court was convened to hear the §5 claims,[11] and on May 10, 1982, the three-judge court denied the

---

10. Because of the different time frames involved in this case, Appellants have prepared a chronology of relevant events and included it as an appendix to this brief.

11. Appellants also moved to disqualify one of the panel members, Honorable Donald S. Russell on the principal ground that: he served in the United States Senate during the time the Voting Rights Act of 1965 was enacted -- he was one of 18 Senators voting against the Act, 111 Cong. Rec. S19374-78 (daily ed., Aug. 4, 1965) -- so that his "impartiality might reasonably be questioned" within the meaning of 28 U.S.C. §455(a) in a judicial proceeding to enforce §5. No personal bias or prejudice against the Appellants was asserted under 28 U.S.C. §144. Judge Russell denied the motion and the Court of Appeals for the Fourth Circuit subsequently denied Appellants' Petition for Writ of Mandamus filed on the same grounds. In re Thomas C. McCain and William Spencer, No. 81-1665 (4th Cir. August 5, 1981).

relief requested by Appellants on the grounds that the §5 requirements had been met. Juris. S.A. 1a. In reaching this decision, the district court began by recognizing that

> [t]here is no dispute that Act No. 1104 of 1966 was subject to the preclearance provision of §5 of the Act and that county officials should have, but did not, submit the Act to the Justice Department or to the District Court for the District of Columbia for preclearance.
> Juris. S.A. 62.

Nonetheless, the court found that "defendants are not required to submit the 1966 Act to the Attorney General of the United States for preclearance, since its provisions, including at-large voting, have been approved by the said Attorney General in preclearing the 1971 Act." Juris. S.A. 20a.

The district court's conclusion that the Attorney General precleared the 1966 Act when he precleared the 1971 Act was based on two grounds. First, the district

court reviewed the information submitted and apparently found as a matter of fact that the Attorney General, in preclearing the 1971 increase in size of the Council, knew that at-large elections were a post-Voting Rights Act change which had never been precleared and knowingly, intentionally precleared those elections in his 1971 letter.

> Plaintiffs' arguments would require this court to find that the Attorney General did not consider the effect of at-large, as opposed to district, voting when he elected not to object to 1971 Act No. 521. Analysis of both the facts before the Attorney General and his requests for additional information do not bear out plaintiffs' arguments. Juris S.A. 10a.

Instead, according to the district court,

> [a]lthough 1971 Act No. 521 is entitled, 'An Act To Amend Act 1104 of 1966...So As To Increase The Number of Districts And The Number of County Council Members,' every indication is that the Attorney General did not limit his

> consideration of the Act to the change in number of districts and number of council members. Id.

The principal basis for this "finding" is an exchange of correspondence between the Justice Department and the State of South Carolina in which additional information was requested and received. The additional information included a copy of the first page of the 1966 statute and the results and name and race of candidates for the two previous primary and general elections -- i.e., 1968 and 1970. Juris. S.A. 11a. Based upon this information, the district court found as a fact that the Attorney General's review of the 1971 change was a review of the entire election system that had been adopted in 1966.

> The information requested and received by Norman indicates that he had the 1966 Act before him and was aware that the form and method of election of the Edgefield County Council then in effect had been adopted in 1966. Norman's letter requesting infor-

> tion about the former districts and results of elections by race indicates that Justice Department review of Act No. 521 encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966. Juris. S.A. 12a.

In addition to this factual analysis of what the Attorney General knew and intended to decide in 1971, the district court also held as a second ground that the language of the 1971 statute compelled a holding that the Attorney General precleared the unchanged portions of the election system.

> Although Act No. 521 changed only the number of residency districts and members of the council, the Act provides for the 'striking out' of all provisions of the 1966 Act dealing with the form and method of electing county council. Juris S.A. 13a.

Turning to the home rule ordinance, the district court held that the Attorney General's 1979 objection was a nullity

because the 1976 ordinance was not a voting change. The court made this finding, not because the adoption of home rule was not a change, but because it found as a fact that the Attorney General's 1975 preclearance of the state-wide home rule authorizing legislation effectively precleared all aspects of Edgefield County's adoption of home rule. Juris. S.A. 17a. The district court rejected the claim that it was improperly reviewing the Attorney General's preclearance decision by holding in effect that Morris v. Gressette, 432 U.S. 491 (1971) barred review of an Attorney General's decision only by voters, not by a jurisdiction, and whether or not home rule was a change was an issue within the jurisdiction of the district court. Juris. S.A. 14a-6a.

Based on this series of factual and legal determinations, the district court

held that the adoption of at-large elections in Edgefield County had been properly approved by the Attorney General and, therefore, meets all §5 requirements.

Probable jurisdiction was noted by this court on June 20, 1983, after requesting and receiving a Brief for the United States as Amicus Curiae.

SUMMARY OF ARGUMENT

The 1966 change in the form and method of selection of government for Edgefield County, South Carolina, from an appointed Board of Commissioners to an elected at-large County Council, was never submitted or precleared as required by §5 of the Voting Rights Act of 1965. The subsequent preclearance in 1971 by the Attorney General of a voting change expressly limited to increase in the size of the Council from three to five members did not result in preclearance sub silentio of the adoption of at-large elections in 1966.

The Attorney General has requested the Appellees to submit the 1966 change involving the adoption of at-large elections for preclearance, and has ruled that (1) the 1971 submission of the increase in size of the Council was not a submission of the adoption of at-large elections in 1966, and (2) he did not, in fact, treat

the 1971 submission as one involving the adoption of at-large elections. Brief for the United States as Amicus Curiae at 7-12. The rulings by the Attorney General in this case, which were disregarded by the district court, are reasonable and represent a consistent interpretation by the Department of Justice of §5. The Attorney General's rulings are entitled to deference. Blanding v. DuBose, 454 U.S. 393, 401 (1982).

The decisions of this Court require that covered jurisdictions, such as Edgefield County, submit any proposed voting changes to the Attorney General in an "unambiguous and recordable manner...with a request for his consideration pursuant to the Act." Allen v. State Board of Elections, 393 U.S. 544, 571 (1969). In accord, United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978); City of Rome v. United States,

446 U.S. 156 (1980). The record in this case reveals a total failure by Appellees to comply with the submission requirements of §5 and the relevant decisions of this Court.

The information submitted by Edgefield County contained absolutely nothing to enable the Attorney General to determine whether the 1966 practice was different from that in effect on November 1, 1964, the relevant date of comparison for preclearance under §5. City of Lockhart v. United States, ___ U.S. ___, 103 S.Ct. 998 (1983). The district court erred by holding that comparison of the 1966 change with the practice in effect in 1971 resulted in preclearance of the 1966 change as a matter of law under §5.

The opinion of the district court is contrary to Congressional policy and the decisions of this Court which have rejected any notion of constructive preclearance

under §5, but have placed upon covered jurisdictions the burden of seeking approval of all voting changes and showing that they are not discriminatory. City of Rome v. United States, 446 U.S. 156 (1980); South Carolina v. Katzenbach, 383 U.S. 301 (1966).

The implementation of statewide home rule in Edgefield County in 1976 continued the use of uncleared at-large voting in violation of §5. Berry v. Doles, 438 U.S. 190 (1978).

The Attorney General, contrary to the holding of the lower court, did not approve the transfer of powers from state to local officials when the Home Rule Act was submitted for preclearance in 1975. Brief for the United States As Amicus Curiae, at 13 n. 10. Accordingly, the 1976 transfer of powers in Edgefield County was a change in voting and the Attorney General's objection should be enforced.

ARGUMENT

I. THE 1966 CHANGE IN FORM OF GOVERNMENT AND THE ADOPTION OF AT-LARGE ELECTIONS FOR THE EDGEFIELD COUNTY COUNCIL HAS NEVER BEEN SUBMITTED FOR §5 REVIEW AND HAS NEVER BEEN PRECLEARED.

The parties are agreed, and the three-judge court found, that (1) Edgefield County is subject to the preclearance provision of §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c;[12] (2) Act No. 1104 of 1966, establishing a new form of government for Edgefield County (i.e. a three member County Council elected at-large to replace a Board of County Commissioners consisting of an elected County Supervisor and two Commissioners appointed by the Governor upon the recommendation of the county's state legislative delegation), was a

---

12. Juris S.A. 6a; J.A. 131. See also South Carolina v. Katzenbach, 383 U.S. 301, 318 (1965); and 28 C.F.R. Part 51.

change in voting within the meaning of §5;[13] and (3) Act No. 1104 was never submitted for preclearance to the Attorney General or the District Court for the District of Columbia.[14]

Despite these admitted facts, the three-judge court ruled the 1966 Act was not subject to preclearance because (1) the Attorney General as a matter of fact approved the at-large method of elections

---

13. Juris S.A. 6a; J.A. 131. See Blanding v. DuBose, 454 U.S. 393, 395 (1982), finding that an analogous statute enacted by the General Assembly of South Carolina in 1967 "that established a new form of government for Sumter County" required preclearance under §5; Horry County v. United States, 449 F.Supp. 990, 995 (D.D.C. 1978)("State's enactments [effecting Horry County, South Carolina] which require that a governing body which was formerly appointed would in the future be elected constitute a new voting standard, practice, and procedure within the state...subject to the preclearance requirements of Section 5."); and 28 C.F.R. Part 51, §51.12(i), defining changes in voting as including those effecting "the term of an elective office or an elected official or in the offices that are elective."

14. Juris S.A. 6a; J.A. 131.

adopted in 1966 when he approved an increase in the size of the Council from three to five in 1971, Juris. S.A. 12, and (2) approval of the 1971 Act as a matter of law resulted in preclearance of the 1966 adoption of at-large elections.

> The Attorney General's approval of these new provisions also renders moot any objection to the superceded 1966 provisions. Juris. S.A. 13a.

The decision of the court below is contrary to the rulings by the Attorney General that the 1966 Act has never been considered or precleared, the opinions of this Court governing the submission and consideration of voting changes and Congressional purpose in enacting the Voting Rights Act.

A. The Attorney General Ruled That The 1966 Act Has Never Been Precleared, A Decision Which Is Entitled to Deference.

The Department of Justice notified officials of the State of South Carolina by letter on December 9, 1980, that the 1966

Act had never been submitted or precleared and that preclearance under §5 was required. Juris. S.A. 40a-1a. The Attorney General's ruling was subsequently reaffirmed by the United States in its amicus curiae brief filed at the request of this court:

> the Attorney General's letter of December 12 [sic], 1980, correctly advised South Carolina officials that the 1966 Act had never been submitted to the Attorney General or the District Court for the District of Columbia for preclearance.

Brief for the United States As Amicus Curiae at 12 n.8. Because the Attorney General never requested or received any information concerning the pre-1966 method of elections, of necessity he "was in no position to evaluate or preclear the at-large feature encompassed in the 1971 Act." Id. at 11.

The Attorney General's "please submit" letter and the amicus brief filed by the United States show that the Attorney General (1) does not regard the 1971 sub-

mission of the increase in size of the Council as a submission of the change in form of government and the adoption of at-large elections enacted in 1966,[15] and (2) did not, in fact, treat the 1971 submission as one involving a change in the form of government or the adoption of at-large elections. The December letter and amicus brief directly contradict the lower court's assertion that "every indication is that the Attorney General did not limit his consideration of the Act to the change in number of council members." Juris. S.A. 10a. But according to the Attorney General, he did precisely that.

This Court has frequently emphasized

---

15. The State of South Carolina was advised, for example, that if it elected to seek preclearance of the 1966 Act by submission to the Attorney General, to "please follow the procedures set forth in the Procedures for the Administration of Section 5 (28 C.F.R. Part 51.)" Juris. S.A. 41a.

that the administration and interpretation of §5 by the Attorney General are entitled to deference from the courts. United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110, 131 (1978); Blanding v. DuBose, 454 U.S. 393, 401 (1982). Here, the determination by the Attorney General that the 1966 Act had never been submitted, considered or precleared (a determination which the district court simply disregarded) is a reasonable interpretation of §5.[16] The Attorney General's ruling is entitled to deference, and nothing in the record suggests any basis for disagreeing with it.

---

16. The facts in this case are clearly distinguishable from those in United States v. Georgia, Civ. No. C76-1531A (N.D. Ga. Sept. 30, 1977), aff'd, 436 U.S. 941 (1978). There, the three-judge court ruled that the voting changes at issue had been submitted and precleared in light of a March 30, 1973, letter from the Attorney General stating that one of the two changes had been precleared in 1970, and a court of appeals decision, Pitts v. Cates, 536 F.2d 56, 57 FOOTNOTE CONTINUED ON NEXT PAGE...

1. The Ruling By The Attorney General In This Case Is Entirely Consistent With The Attorney General's Regulations For The Administration of §5.

The regulations adopted by the Attorney General for administration of §5, whose use has been approved by this Court, see, e.g., Georgia v. United States, 411 U.S. 526, 536 (1973), and Blanding v. DuBose, supra, are fully consistent with the Attorney General's ruling in this case. The guidelines were published in their final form on September 10, 1971 (36 Fed. Reg. 18186 et seq.), two weeks before South Carolina responded to the Department of Justice's request for additional information concerning the 1971 submission. Moreover, proposed guidelines were published for comment in May 28, 1971 (36 Fed. Reg. 9781 et seq.), nearly two

---

FOOTNOTE CONT'd...(5th Cir. 1976), indicating that the second change had also been precleared.

months before the 1971 change was first submitted.

The guidelines are unambiguous and require that submissions "clearly set forth" the nature of proposed voting changes and that the Attorney General be provided "[a]n explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting." 28 C.F.R. §§ 51.5, 51.10(a)(4).[17] There can

---

17. The guidelines were revised on January 6, 1981, 28 C.F.R. Part 51, and continue to require a clear description of voting changes for which preclearance is sought: "Each submission should contain ....(b) If the change affecting voting is not readily apparent on the face of the documents provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explana-
FOOTNOTE CONTINUED NEXT PAGE...

be no contention that there was any clear statement of the 1966 change from appointed to elected government and the adoption of at-large elections in the initial 1971 submission or in the material subsequently provided the Attorney General. Indeed, there was no statement of such a change at all.

The Attorney General's ruling in this case that the 1966 change was not submitted or precleared conforms to the regulations for administration of §5, and reflects a consistent, reasonable policy in the administration of the statute. The Attorney General's ruling is entitled to deference. Blanding v. DuBose, supra.

B. The 1966 Act Was Never Submitted For Preclearance.

Although §5 itself prescribes no formal procedures for the submission of voting

---

FOOTNOTE CONT'd...tory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting." 28 C.F.R. §51.25.

changes to the Attorney General,[18] this Court, beginning with Allen v. State Board of Elections, 393 U.S. 544, 571 (1969), and before the promulgation by the Justice Department of guidelines for the administration of §5, established the general requirement that submitting jurisdictions give the Attorney General "an adequate opportunity" to determine the purpose or effect of any proposed new voting practice. In Allen, the State of Mississippi contended that once it had served a copy of its brief on the Attorney General the voting changes at issue had been "submitted" for purposes of §5, and that the Attorney General having failed to

---

18. Section 5 provides merely that a new voting practice may be implemented if it "has been submitted...to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or...the Attorney General has affirmatively indicated that such objection will not be made." 42 U.S.C. §1973c.

interpose an objection within 60 days, the changes must be deemed pre-cleared. This Court rejected such a narrow construction of the "has been submitted" requirement of §5. It held that:

> A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.
> 393 U.S. at 571.

The "unambiguous and recordable manner" requirement of Allen has been consistently applied by this Court. In United States v. Board of Commissioners of Sheffield, Ala., supra, the City of Sheffield in a §5 submission letter requested permission to hold a referendum whether its commission form of government should be changed in favor of the mayor and alderman form. The letter further provided that if the referendum were approved the mayor-aldermanic form that existed in 1912

would be automatically reinstated. 435 U.S. at 114 n.5. The Attorney General precleared the holding of the referendum and the change in form of government was approved by the voters. The city then sought to implement the new form of government without additional pre-clearance arguing that approval of the referendum constitued approval of the change in form of government as well. This Court disagreed. It held that "the Attorney General, quite properly, treated Sheffield as having sought prior clearance only of the referendum," and that the lower court erred in concluding that the Attorney General "has to be understood as having approved" the adoption of the new form of government. 435 U.S. at 138. The Court reasoned that "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly sub-

mitted nor in fact evaluated by him." 435 U.S. at 136.

Allen and Board of Commissioners of Sheffield, Ala. were subsequently applied in City of Rome v. United States, 446 U.S. 156 (1980). There, the City of Rome argued that the submission and preclearance of a comprehensive municipal election code by the State of Georgia deferring to local charters regarding majority vote and numbered post requirements constituted preclearance of such procedures implemented by the City of Rome. The argument was unavailing.

> [T]he State's 1968 submission cannot be viewed as a submission of the city's 1966 electoral changes, for, as the District Court noted, the State's submission informed the Attorney General only of 'its decision to defer to local charters and ordinances regarding majority vote, runoff elections, and numbered posts, 'and' did not... submit in an 'unambiguous and recordable manner' all municipal charter provisions, as written in 1968 or as amended thereafter, regarding these issues.'
> 446 U.S. at 169 n.6.

Edgefield County's 1971 submission of a change expressly limited to an increase in the size of the Council was not an unambiguous and recordable request for preclearance of the 1966 change in the form and method of election of government. The submission informed the Attorney General only that the county wished to enlarge its government from three to five members, but it did not inform the Attorney General in any way that the county had also made a change in 1966 from appointed to elected at-large government and that preclearance of that change was also being sought.[18] The failure of the Appellees to request

---

18. The lower court attached great importance to the fact that in preclearing the 1971 change, the Attorney General requested, and "had...before him," a copy of the 1966 Act. Juris. S.A. 12a. Actually, the State sent the Attorney General only the first page (out of five) of the 1966 Act describing the three council districts, but omitting any description of the new powers of the council. J.A. 252-55. The fact that FOOTNOTE CONTINUED ON NEXT PAGE...

preclearance of the change in form and method of election of county government is fatal to their claim that the change was approved by preclearance of the 1971 increase in Council size.

C. Neither Congress Nor This Court Has Authorized Constructive Pre-Clearance Of Voting Changes.

Reduced to its essentials, the lower court's ruling is that the Attorney General is charged with constructive knowledge that the 1966 Act was a voting practice different from that in force or effect on November 1, 1964, and that the 60 day preclearance period began to run from the date of such notice. This Court, however, has never approved constructive preclearance but has required compliance with the actual notice requirements of §5.

FOOTNOTE CONT'd...the entire Act was not submitted is merely additional evidence that the State itself regarded the 1971 submission as involving only an increase in size of the Council.

In United States v. Board of Commissioners of Sheffield, Ala., 430 F.Supp. 786, 789 (N.D. Ala. 1976), the three-judge court ruled that the Attorney General had "actual or constructive knowledge" that approval of a referendum involving a change in form of city government would result under state law in the adoption of at-large elections, and that approval of the referendum resulted in the constructive preclearance of at-large voting. This Court characterized the reasoning of the lower court as "extreme" and reversed.

> The District Court's conclusion that the Attorney General should have known of this provision of Alabama law would be sustainable only if we were to take the extreme position that the Attorney General should be charged with notice of all provisions of local law. United States v. Board of Commissioners of Sheffield, Ala., supra, 435 U.S. at 137 n.28.

Taken to its logical conclusion, the rationale of the lower court would amount to the repeal of the submission requirement of

§5 and place upon the Attorney General the burden of initiating review of all voting changes. If the Attorney General is deemed to have constructive knowledge of state law, then the 60 day preclearance period would begin to run automatically upon passage by any of the covered jurisdictions of new voting practices and procedures. But that is not the submission scheme enacted by Congress and approved by this Court in South Carolina v. Katzenbach, 383 U.S. 301, 334-35 (1966).

D. The Lower Court Improperly Held That The 1966 Act Was Precleared In The Context Of The 1971 Act, Rather Than By Reference To The Practice In Effect In Edgefield County On November 1, 1964.

The lower court ruled that the Attorney General precleared a post-November 1, 1964, voting practice (a 1966 change from an appointed County Commission to an elected at-large County Council) when he precleared another post-November 1, 1964, voting prac-

tice (a 1971 increase in size of the Council from three to five members). The court reasoned that the "Justice Department's review of Act No. 521 [the 1971 Act] encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966." Juris. S.A. 12a. Section 5 and the decisions of this Court provide, however, that the appropriate basis for comparison under the statute is not between two post-Voting Rights Act practices, but between a new practice and the practice in effect on November 1, 1964. Perkins v. Matthews, 400 U.S. 379, 395 (1971); Hathorn v. Lovorn, 457 U.S. 255,102 S.Ct. 2421, 2428 n.16 (1982); City of Lockhart v. United States, ___ U.S. ___, 103 S.Ct. 998, 1002 (1983).

The only way the 1966 Act could have been precleared consistent with §5 would

have been by comparing it with the practice in effect in Edgefield County on November 1, 1964. There was, however, absolutely nothing in the submission from South Carolina to indicate what that practice was.

The Attorney General, as noted supra at 37, has consistently taken the position that the 1966 Act was never submitted, considered or precleared. The effect of the lower court's ruling,therefore, is that a post-Voting Rights Act enactment (the 1966 Act) is precleared as a matter of law if it is compared with a subsequent, precleared enactment (the 1971 Act). The reasoning of the district court, however, overlooks the fact that Congress established November 1, 1964, as the relevant date of comparison of Voting changes. The decision of the lower court is antithetical to §5 and should be set aside.

The alternate basis for the court's ruling is even more flawed. It held that

the 1971 Act substituted "completely new provisions for the form and method of election of Edgefield County Council, including provisions for the at-large with residency requirement form of election," and that the Attorney General's preclearance "of these new provisions also renders moot any objection to the superceded 1966 provisions." Juris. S.A. 13a. In essence, the court ruled that post-Voting Rights Act changes are precleared as a matter of law by being compared only with themselves -- or without being compared to anything at all.

II. THE 1976 IMPLEMENTATION OF HOME RULE.

A. The Implementation Of At-Large Elections In The Context Of Home Rule In Edgefield County Was A Continuing §5 Violation.

The district court held that the implementation of at-large elections in the context of home rule in Edgefield County in 1976 was "not a change subject to §5 pre-

clearance." Juris. S.A. 17a.[19] However, if Appellants are correct that the adoption of at-large elections for the County Council in 1966 was never submitted or precleared, then it necessarily follows that the implementation of at-large elections in the context of home rule in 1976 was also a voting change subject to the preclearance requirements of §5. The requirement of complying with §5 is a continuing one, Berry v. Doles, 438 U.S. 190, 195 n.1 (1978)(concurring opinion of J. Brennan), and neither Appellees nor the court below has suggested that

---

19. In reaching this conclusion the court contradicted the logic of its earlier ruling that the 1971 Act substituted "completely new provisions for the form and method of election of Edgefield County Council." Juris. S.A. 13a. If the 1971 Act was a new enactment, then logically so was the 1976 implementation of home rule. By the same token, if home rule merely continued at-large voting, as the lower court held, then so did the 1971 Act, with the result that there was no voting change in 1971 involving at-large elections that could have been precleared.

merely reenacting an unsubmitted voting practice obviates the need for §5 review.

The lower court, if it erred in finding that the 1966 Act had been precleared, also erred in finding that the implementation of at-large voting in the context of home rule was not a voting change. Accordingly, the court below should be reversed and Appellees enjoined from using the at-large method adopted under home rule absent preclearance. Perkins v. Matthews, 400 U. U.S. 379, 397 (1971).

B. The Attorney General's Objection To 1976 Home Rule Should Be Enforced.

The lower court, relying upon Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979), concluded that the Attorney General had previously approved all aspects of home rule implementation in Edgefield County when he precleared the statewide Home Rule Act in

1976.[20] The Attorney General, however, disagrees with the district court.[21]

---

20. Woods held that the transfer of powers from state to Charleston County officials under the Home Rule Act in South Carolina had been effectively precleared by the Attorney General on June 27, 1975, when he (1) precleared the holding of referenda under the Act, (2) reserved the right to object to the choice of form of government by individual counties, and (3) was silent as to the transfer of powers. According to the district court in this case, Woods "expressly rejected" the analysis of an earlier case from the District Court for the District of Columbia, Horry County v. United States, 449 F.Supp. 990, 995 (D.D.C. 1978), which held the post-1975 transfer of powers in Horry County, South Carolina under the Home Rule Act was a voting change subject to preclearnace. In Horry County there was no discussion of whether the Attorney General had precleared the transfer of powers when the Home Rule Act was submitted to him in 1975, although if he had, there would have been no basis upon which the District of Columbia court could have found that additional preclearance was required.

21. The United States did not appeal from the adverse ruling in Woods and contends that as a result it is estopped in this case from relitigating the issue whether the transfer of powers was precleared in 1975. Brief for the United States As Amicus FOOTNOTE CONTINUED ON NEXT PAGE...

According to the Brief for the United States as Amicus Curiae, at 13 n.10:

> In Woods v. Hamilton, supra,... we took the position that the Attorney General had not precleared the transfer of powers feature of the Home Rule Act that was submitted to him in 1975. We argued that the Attorney General had precleared only the holding of referenda to determine whether to change the form of local government...while reserving the right to review each county's subsequent implementation of all other aspects of the Home Rule Act.

The Attorney General's determination that the transfer of powers had not been precleared is reasonable and is entitled to deference. United States v. Board of Commissioners of Sheffield, Ala., supra, 435 U.S. at 131.[22]

FOOTNOTE CONT'd...Curiae, at 13 n.10. Appellants, however, were not parties in Woods and are therefore not bound by that decision but may present the transfer of powers issue to this Court for review on appeal. Hathorn v. Lovorn, supra, 102 S.Ct. at 2430 N.23.

22. Subsequent to Woods, the Attorney
FOOTNOTE CONTINUED ON NEXT PAGE...

This Court, however, need not reach the issue whether the 1976 transfer of powers is a covered change and whether the Attorney General's objection is enforceable. If Appellants are correct that the 1966 Act was never precleared, then the 1976 Home Rule Ordinance would be a continuation of uncleared voting practices and could not be implemented. If, however, the Court finds that the 1966 Act was precleared, then the Attorney General's objection should be enforced with the result that Edgefield would revert to the voting practices precleared in 1971, i.e., a five member Council elected at-large with 1971, but not 1976, home rule powers.

FOOTNOTE CONT'd...General revised the guidelines for administration of §5 in 1981 to reiterate that local implementation of precleared enabling legislation and contingent or non-uniform requirements were subject to §5 review. 28 C.F.R. §51.14.

III. THE OPINION BELOW IS CONTRARY TO CONGRESSIONAL POLICY IN ENACTING THE VOTING RIGHTS ACT.

Congress intended for §5 to be a powerful and effective remedy for discrimination in voting, one that would "shift the advantage of time and inertia from the perpetrators of the evil to its victims." South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966). "Fearing that covered jurisdictions would exercise their ingenuity to devise new and subtle forms of discrimination," Hathorn v. Lovorn, supra, 102 S.Ct. at 2429, Congress froze the election laws of those jurisdictions, and placed upon them the burden of proving that any proposed new changes in voting have neither the purpose nor effect of discriminating before they could be implemented. City of Rome v. United States, supra, 446 U.S. at 183 n.18.

Whether or not to extend §5 was carefully considered by Congress in 1970,

1975 and most recently in 1982. On each occasion, Congress expressed its fear that the fragile gains in minority political participation would be eroded by the use of new discriminatory procedures, and voted to extend the preclearance requirement. House Report No. 91-373, 91st Cong., 2d Sess. (1970), 2 U.S. Cong. and Admin. News 3284 (1970)("Section 5... provides an important safeguard that new subterfuges will be promptly discovered and enjoined."); House Report No. 94-196, 94th Cong., 1st Sess., 10-1 (1975); Senate Report No. 94-295, 94th Cong., 1st Sess., 19 (1975)("it is Section 5 which serves to insure that this progress shall not be destroyed through new procedures and techniques. Now is not the time to jeopardize this progress through the removal of these crucial preclearance protections."); Senate Report No. 97-417,

97th Cong., 2d Sess., 10 (1982)("Continued progress toward equal opportunity in the electoral process will be halted if we abandon the Act's crucial [§5] safeguards now.")

Consistent with Congressional policy this Court has given §5 "the broadest possible scope...to reach any state enactment which alters the election law of a covered state in even a minor way," Allen v. State Board of Elections, supra, 393 U.S. at 566-67; Dougherty County v. White, 439 U.S. 32, 38-9 (1978), and has required strict compliance with the submission requirements of the statute. United States v. Board of Commissioners of Sheffield, Ala., supra.

The lower court's opinion is inconsistent with Congressional voting rights policy and the implementing decisions of this Court. It allows covered jurisdictions to do precisely what Congress intend-

ed for them not to do -- devise new forms of discrimination in voting. Under the district court's formulation, a jurisdiction could enact a blatantly discriminatory new election procedure but fail to submit it for preclearance. It could then enact a racially nonregressive amendment to the act and seek preclearance of that. If the amendment were precleared -- which it would have to be under Beer v. United States, 425 U.S. 130 (1975), and see City of Lockhart v. United States, supra, 103 S.Ct. at 1004 -- the jurisdiction could then implement the underlying discriminatory change free and clear of §5 on the theory that it was precleared sub silentio, despite the fact that such change was never submitted, was never considered and was never approved by the Attorney General.

The lower court's opinion allows covered jurisdictions to make a shell

game out of §5 in which every submission, no matter how benign it appeared on the surface, might conceal a new, crippling form of discrimination in voting. The Department of Justice would then have to guess as to which submissions likely concealed discriminatory practices, or request the submission of all a jurisdiction's voting laws to make a judgment as to concealed, unsubmitted changes, or disallow voting changes altogether for fear of preclearing undisclosed discriminatory practices. None of these courses were contemplated by Congress when it placed upon the submitting jurisdictions the duty of identifying and submitting their voting changes for preclearance.

The lower court's opinion violates the intent of Congress and the decisions of this Court construing §5. It should be set aside.

CONCLUSION

The Court should reverse the judgment below and enjoin further use of at-large elections for the Edgefield County Council until such time as Appellees comply with the preclearance provisions of §5 of the Voting Rights Act of 1965.

Respectfully submitted,

LAUGHLIN McDONALD *
NEIL BRADLEY
CHRISTOPHER COATES
American Civil Liberties
Union Foundation, Inc.
52 Fairlie Street, N.W.
Suite 355
Atlanta, Georgia 30303-2188
[404] 523-2721

ARMAND DERFNER
5520 33rd Street, N.W.
Washington, D. C. 20015

HERBERT E. BUHL, III
533-A Harden Street
Columbia, S.C. 29205
ATTORNEYS FOR APPELLANTS
* Counsel of Record

CHRONOLOGY OF RELEVANT EVENTS

June 1, 1966	Act No. 1104 enacted, without preclearance, abolishing the appointed Edgefield County Board of Commissioners and establishing the elected at-large County Council.
June 25, 1971	Act No. 521 enacted increasing the size of the Council from three to five members.
November 24, 1971	Act No. 521 precleared by the Attorney General.
February 26, 1974	Complaint filed alleging vote dilution and malapportionment of Council residency districts.
May 16, 1974	District court granted appellants summary judgment on malapportionment claim.
June 17, 1974	Court of appeals reversed.

November 25, 1974	Petition for writ of certiorari denied.
June 15, 1975	Home Rule Act enacted requiring counties to adopt one of five designated forms of government.
November 24-25, 1975	Appellants' dilution claim tried by district court.
April 14, 1976	District court denied Appellants' motion for injunction pending decision on the merits.
May 13 and 19, 1976	Edgefield County blacks filed petitions calling for referendum on implementation of home rule, but county officials refused to call an election.
June 21, 1976	Council enacted home rule ordinance adopting

	council-administrator form of government elected at-large.
February 8, 1979	Attorney General objected to implementation of home rule in the context of at-large elections for the Edgefield County Council.
April 17, 1980	District court ruled at-large elections for the Council diluted black voting strength.
April 25, 1980	Appellees moved to alter or amend judgment based upon City of Mobile v. Bolden, 446 U.S. 55 (1980).
August 11, 1980	District court vacated April 17, 1980 Order.
November 24, 1980	Appellants amended complaint to enforce §5

	objection.
December 9, 1980	Attorney General requested state officials to submit Act No. 1104 of 1966 for preclearance.
January 6, 1981	Appellants amended complaint to enjoin use of Act No. 1104 of 1966 absent preclearance.
April 30, 1982	Appellants filed motion for injunction pending trial on the merits.
May 11, 1982	Three-judge court denied relief on Appellants' §5 claims.
May 11, 1982	Single judge court denied Appellants' motion for preliminary injunction.
June 7, 1982	Appellants appealed §5 issues to Supreme Court.
July 29, 1982	Appellants moved to re-

	instate April judgment on their dilution claim in light of the amendment of §2 of the Voting Rights Act, 42 U.S.C. §1973, and the decision in Rogers v. Lodge, ___ U.S. ___, 102 S.Ct. 3272 (1982).
November 5, 1982	Appellants' motion to reinstate judgment heard and taken under advisement by single judge court.
June 20, 1983	Probable jurisdiction noted by Supreme Court

Office Supreme Court, U.S.
F I L E D
SEP 8 1983
ALEXANDER L. STEVAS, CLERK

NO. 82-282

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

Thomas C. McCain, et. al.,

Appellants,

vs.

Charles E. Lybrand, et. al.,

Appellees.

ON APPEAL FROM THE THREE-JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

APPELLEES' BRIEF ON THE MERITS

T. TRAVIS MEDLOCK
Attorney General

TREVA G. ASHWORTH
Senior Assistant
Attorney General

Post Office Box 11549
Columbia, SC 29211

KAREN LeCRAFT HENDERSON*

Post Office Box 11458
Columbia, SC 29211

(803) 765-1885

CHARLES W. COLEMAN

Post Office Box 70
Edgefield, SC 29824

ATTORNEYS FOR APPELLEES

*Counsel of Record

QUESTION PRESENTED

Whether or not the district court was correct in holding that the current method of electing the members of the Edgefield County Council has been pre-cleared by the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965.

TABLE OF CONTENTS

	Page
Statement.....	1
Summary of Argument.....	14
Argument:	
The district court was correct in holding that the current method of electing the members of the Edgefield County Council has been pre-cleared by the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965.....	16
A. Act No. 1104 of 1966....	16
B. Act No. 521 of 1971.....	18
I. Act No. 521, which amended the election provisions of Act No. 1104 of 1966, was submitted to the United States Attorney General pursuant to Section 5 and was pre-cleared....	18
II. The pre-clearance of Act No. 521 of 1971 pre-cleared the at-large with residency districts election of a five-member Edgefield County Council for two year terms of office.....	21

III. The Justice Department's regulations neither are nor should be controlling here..... 36

IV. The preclearance of Act No. 521 of 1971 renders moot the Attorney General's 1980 "please submit" letter..... 43

V. The method of election prescribed by Act No. 521 of 1971 is unchanged by the enactment of the "home rule" legislation and the adoption of the implementing ordinance and resolution..... 46

VI. The Attorney General's preclearance of Act No. 521 of 1971 is not subject to judicial review..... 56

Conclusion..... 62

TABLE OF AUTHORITIES

CASES:	Page
Allen v. State Board of Elections, 393 U.S. 544 (1969).....	29, 30, 31, 53, 59
Automobile Club of Michigan v. C.I.R., 353 U.S. 180 (1957).....	38
Berry v. Doles, 438 U.S. 190 (1978).	46
Briscoe v. Bell, 432 U.S. 404 (1977).....	56
City of Lockhart v. United States, ___ U.S. ___, 74 L.Ed.2d 863, 103 S.Ct. 998 (1983).....	27
City of Mobile v. Bolden, 446 U.S. 55 (1980).....	3, 13
City of Rome v. United States, 446 U.S. 156 (1980).....	29, 30, 31
Duncan v. The County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).	45
Garcia v. Uvalde County, 455 F.Supp. 101 (1978), aff'd 439 U.S. 1059 (1979).....	25, 48
Georgia v. United States, 411 U.S. 526 (1973).....	48, 59
Harris v. Levi, 416 F.Supp. 208 (D.D.C. 1976), aff'd in part and vacated in part on other grounds and remanded sub nom. Harris v. Bell, 562 F.2d 772 (D.C. Cir. 1977).....	37, 38
Horry County v. United States, 449 F.Supp. 990 (1978).....	53

	Page
Jenness V. Little, 306 F.Supp. 925 (N.D.Ga. 1969).....	
McCain v. Edwards, 272 S.C. 539, 252 S.E.2d 924 (1979).....	8
McCain v. Lybrand, 376 F.Supp. 304 (D.S.C. 1974), rev'd sub nom. Lytle v. Commissioners of Election, 509 F.2d 1049 (4th Cir. 1974), cert. denied 419 U.S. 1032 (1974).....	2, 3
Mandel v. Bradley, 432 U.S. 173 (1977).....	33
Miller v. United States, 294 U.S. 435 (1935).....	38
Morris V. Gressette, 432 U.S. 491 (1977).....	15, 35, 36, 37, 43, 50, 56 - 60
Perkins v. Matthews, 400 U.S. 379 (1971).....	17, 53
Rogers v. Lodge, ___ U.S. ___, 73 L.Ed.2d 1012, 102 S.Ct. 3272 (1982).....	4
Service v. Dulles, 354 U.S. 363 (1957).....	37
State Board of Election Commissioners v. Evers, 405 U.S. 1001 (1972).....	54
United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978).....	29, 30, 31, 51

Page

United States v. Georgia, C.A. No. C76-1531A (N.D.Ga. 1977), aff'd 436 U.S. 941 (1978)..... 31, 38, 42, 43, 52

United States v. Saint Landry Parish School Board, 601 F.2d 859 (5th Cir. 1979)..... 43

Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979)..... 11

Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979)..... 11, 47, 48, 49, 52

CONSTITUTIONAL PROVISIONS:

Constitution of South Carolina, 1895, as amended

Article VIII, Section 7..... 7, 45

Constitution of the United States

Amendment I..... 2

Amendment XIII..... 2

Amendment XIV..... 2

Amendment XV..... 2, 43

STATUTORY PROVISIONS:

Code of Laws of South Carolina, 1962, as amended

§§ 14-201 through 14-210 5

	Page
§§ 14-251 through 14-258	5
Code of Laws of South Carolina, 1976, as amended	
§ 4-9-10.....	7, 45, 49
§ 4-9-10(a).....	49
§ 4-9-10(b).....	8, 49, 50
§ 4-9-10(c).....	61
§ 4-9-30.....	49
South Carolina statutes at large	
Act No. 1104 of 1966 [54 STAT. 2767 (1966)].....	passim
Act No. 55 of 1967 [55 STAT. 55 (1967)].....	6
Act No. 1318 of 1968 [55 STAT. 3100 (1968)].....	6
Act No. 521 of 1971 [57 STAT. 989 (1971)].....	passim
Act No. 1042 of 1974 [58 STAT. 2224 (1974)].....	6, 7
Act No. 283 of 1975 [59 STAT. 692 (1975)].....	7
United States Code	
42 § 1971.....	2
42 § 1973 c[§ 5, 1965 Voting Rights Act].....	passim
42 § 1983.....	2

Page

MISCELLANEOUS:

Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee on Extension of the Voting Rights Act, 97th Cong., 1st Sess. ser. No. 24, pt.3, 2239 (1981)..... 18

Hearings on H. R. 939 ... Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 94th Cong. 1st Sess. ser. No. 1, pt.1, 537 (1975)..... 18

28 C.F.R. § 51.2(d)..... 53

28 C.F.R. § 51.12..... 53

38 C.F.R. § 51.14..... 55

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

Thomas C. McCain, et. al.,

Appellants,

vs.

Charles E. Lybrand, et. al.,

Appellees.

ON APPEAL FROM THE THREE-JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

APPELLEES' BRIEF ON THE MERITS

STATEMENT OF THE CASE

This appeal is from the order of the three-judge district court dated May 10, 1982, holding that the current method of electing the members of the Edgefield County Council has not been put into effect in violation of Section 5 of the Voting Rights Act of 1965 and denying the appellants' request for injunctive relief. J. S. App. beginning at 1a.

The appellants are two black voters of Edgefield County, South Carolina, and the defendants are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the executive committee of the Edgefield County Democratic Party. J.S. App. 2a.

The appellants filed their original complaint in this action on February 26, 1974, alleging, first, that the at-large method of electing the Edgefield County Council diluted black voting strength in violation of the First, Thirteenth, Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1971, 1973 and 1983 and, second, that the Edgefield County Council residency districts were malapportioned. J.A. 1. On May 16, 1974, the district court granted summary judgment to the appellants on their malapportionment claim. McCain v. Lybrand, 376 F.Supp. 304 (D.S.C. 1974). The Fourth

Circuit Court of Appeals, however, reversed sub nom. Lytle v. Commissioners of Election, 509 F.2d 1049 (4th Cir. 1974), and this Court subsequently denied a petition for a writ of certiorari. McCain v. Lybrand, 419 U.S. 1032 (1974). J.A. 133.

The dilution issue was tried on November 24 and 25, 1975, and, on April 17, 1980, the district court entered an order finding that the at-large method of election infringed on the appellants' rights to due process and equal protection of the laws in connection with their voting rights. J.A. 30. On April 25, 1980, the appellees moved to alter, amend or vacate the judgment on the basis of the intervening decision in City of Mobile v. Bolden, 446 U.S. 55 (1980). Their motion was granted on August 11, 1980, with leave to introduce additional evidence on the issue of intent to discriminate. J.A. 84. Before that hearing could be conducted, however, the appellants were allowed to amend their 1974

complaint to add their claims under Section 5 of the 1965 Voting Rights Act, which necessitated the convening of the three-judge district court. J.A. 102, 119. The "intent" hearing remains pending before the district court, the appellants having moved to reinstate the April 17, 1980, order on the basis of Rogers v. Lodge, __ U.S. __, 73 L. Ed. 2d 1012, 102 S.Ct. 3272 (1982). [1/]

On and prior to November 1, 1964, Edgefield County was governed by a board of county commissioners, consisting of an elected county supervisor and two commissioners appointed by the Governor upon the recommendation of the Edgefield County legislative delegation. The duties, powers and functions of the Edgefield County Board of Commissioners were prescribed by Sections

---

1/ The district court held a hearing on the motion to reinstate on November 5, 1982, and took the motion under advisement pending this appeal. Docket Sheet entry of November 5, 1982.

14-201 through 14-210 and 14-251 through 14-258 of the 1962 Code of Laws of South Carolina, as amended. J.A. 142.

On June 1, 1966, the South Carolina General Assembly enacted Act No. 1104 creating the Edgefield County Council. It consisted of three members elected for terms of two years, with one member with the largest plurality elected from the county at-large from each of three designated residency districts as prescribed by Act No. 1104. J.A. 154. Although Act No. 1104 of 1966 was a voting qualification or prerequisite to voting, or standard, practice or procedure different from that in force or effect in Edgefield County on November 1, 1964, the lower court found that it was neither submitted to the United States Department of Justice for pre-clearance nor judicially reviewed by the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights

Act of 1965. J.S. App. 6a. [2]

Act No. 1104 of 1966 was amended on June 25, 1971, by Act No. 521, which was submitted to the United States Attorney General pursuant to Section 5 on July 21, 1971. Brief for the United States as Amicus Curiae App. 1a. The United States Attorney General, after requesting additional information, advised the Office of the South Carolina Attorney General by letter dated November 24, 1971, that he interposed no objection to its provisions. J.S. App. 43a.

Act No. 1104 of 1966 was also amended in 1967 (Act No. 55), in 1968 (Act No. 1318) and in 1974 (Act No. 1042). J.A. 171. Those acts did not alter the method of election of the

---

[2] The appellants' repeated assertions to the contrary notwithstanding [Appellants' Brief on the Merits 8, 18, 35, 36] the appellees have not stipulated that Act No. 1104 of 1966 was never pre-cleared. Rather, the appellees concede that "there are no records discovered to date which indicate" that the 1966 legislation was pre-cleared. J.A. 131. See n.9, infra at 17.

Edgefield County Council and, except for Act No. 1042 of 1974, they were not submitted to the United States Department of Justice for pre-clearance or to the United States District Court for the District of Columbia for judicial review. J.A. 220. Act No. 1042 of 1974 was submitted to the Justice Department for pre-clearance and no objection was interposed to its provisions. Id.

Then, in 1975, pursuant to Article VIII of the South Carolina Constitution, the General Assembly of South Carolina enacted Act No. 283, the "home rule" legislation, now codified as Sections 4-9-10 et seq. of the 1976 Code of Laws of South Carolina. Act No. 283 authorized all South Carolina counties to select by referendum one of five forms of county government before July 1, 1976. If no referendum had been held by then, the county automatically had as of that date the form of government, including method of election, "most nearly corresponding to the

form in effect immediately prior to that date" [§4-9-10(b), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended], which, in the case of Edgefield County, the General Assembly determined to be the council-administrator form. J.A. 133. The method of election remained that prescribed by Act No. 521 of 1971 [J.A. 140], which had theretofore been pre-cleared pursuant to Section 5 of the Voting Rights Act. The home rule legislation itself was pre-cleared by the United States Attorney General on August 28, 1975. J.S. App. 17a.

Edgefield County did not conduct a referendum on the question of the form of government (including method of election) prior to July 1, 1976, because no proper petition was timely filed as held in McCain v. Edwards, 272 S.C. 539, 252 S.E. 2d 924 (1979). J.A. 135. 3/

3/ The appellants state that "[t]here was substantial support for a referendum in

On March 29, 1976, the appellants filed a motion herein to enjoin the upcoming 1976 election for the Edgefield County Council, which motion was denied on April 14, 1976. J.A. 135.

On June 21, 1976, the Edgefield County Council enacted a resolution and ordinance which formally adopted the council-administrator form of county government and continued the method of election prescribed by Act No. 521 of 1971. J.A. 140, 186.

3/ cont., Edgefield County among the black voters who strongly favored the adoption of a single member district system of election, Juris. S.A. 36a, but even though they filed enough signatures to require a referendum, the County Council refused to call one...." Appellants' Brief on the Merits 13. The basis for their assertion that there was substantial support among Edgefield County blacks for the single-member district method is a conclusion by the Justice Department that its "information" was to that effect. J.S. App. 36a. The appellants' characterization of the circumstances surrounding the failure to hold a referendum is disingenuous. The petition was not timely filed, the South Carolina Supreme Court so decided (which decision this Court was not asked to review) and the appellants have so agreed. J.A. 135.

On August 3, 1978, the United States Department of Justice wrote to Edgefield County requesting that the 1976 ordinance be pre-cleared. By letter dated September 29, 1978, Edgefield County's implementation of home rule was submitted to the United States Attorney General, who received it on October 3, 1979. On November 3, 1978, the United States Attorney General requested additional information and the submission was completed on December 10, 1978. J. A. 136.

On February 8, 1979, the United States Attorney General by letter interposed an objection to Edgefield County's submission. J.A. 136, J.S. App. 29a. In view of the Attorney General's outstanding objection, the Edgefield County Council, on April 9, 1979, took action to "pursue the implementation" of the single-member district method of election and appointed a citizens advisory committee to propose single-member districts. J.A. 189, 191, 224. Subsequently, however, in

Woods v. Hamilton, 473 F.Supp. 641 (D.S.C. 1979), a three-judge district court held that the pre-clearance of the "home rule" legislation effectively pre-cleared a county which had held no referendum on form of government and had retained its pre-home rule method of election. 473 F.Supp. at 644, n.7. At about the same time, the South Carolina Supreme Court held that a county whose method of election had not been pre-cleared could not have a different method of election established by legislation relating only to that county. Van Fore v. Cooke, 273 S.C. 136, 255 S.E. 2d 339 (1979). The proposed single-member district plan was then held in abeyance until the South Carolina General Assembly could act to resolve the matter by general law. J.A. 216. [4/]

[4/] The appellants' assertion that "the County Council never complied with the objection" [Appellants' Brief on the Merits 16] is not sufficient, the appellees submit,

The appellants moved on April 15, 1980, to enjoin the 1980 at-large elections and on April 17, 1980, the lower court entered the order earlier discussed [supra at 3] 5/ and enjoined further elections until a new method of electing the Edgefield County Council was adopted pursuant to applicable State law. J.A. 137. On April 21, 1980, the Edgefield County Council held a meeting and voted to authorize the county attorney to meet with the lower court, which had retained jurisdiction [J.A. 76], and discuss "the plan of action ... recommended ... by the Citizens

---

4/ cont. to constitute a complete statement of the case in this regard.

5/ Although the dilution issue is not before this Court, the appellants quote extensively from the vacated order in their statement of the case. Appellants' Brief on the Merits 19-22. The appellees simply note that the facts on which the vacated order is based are stale, many of them over ten years old. Among other changes, the appellant McCain became chairman of the Edgefield County Democratic Party. J.A. 224; Record Vol. II, Lybrand Dep., Ex.O., at 2.

Advisory Committee to establish single member districts." J.A. 206. Then, on April 22, 1980, this Court handed down its decision in City of Mobile v. Bolden, 446 U.S. 55 (1980), and the appellants successfully moved to alter, amend or vacate judgment based on that holding. J.A. 138.

In the meantime, the appellants moved to amend their complaint (1) to enjoin an alleged "change" under the Voting Rights Act which occurred when the Edgefield County Council decided to ask the lower court to reconsider the April 17, 1980, order and not to pursue its motion made on April 21, 1980, to inquire into the implementation of single member election districts, (2) to require the pre-clearance of Act No. 1104 of 1966, and (3) to enjoin implementation of the objected to 1976 resolution and ordinance. J.A. 139, 221. Allowance to amend was granted in two orders, one entered on November 24, 1980, and

the other on January 6, 1981. J. A. 102, 119. [6]

On June 7, 1982, the appellants filed a timely appeal [J.S. App. 23a] from the May 10, 1982, opinion of the three-judge district court [7] and this Court noted probable jurisdiction on June 20, 1983.

SUMMARY OF ARGUMENT

The lower court correctly held that the current method of electing the members of the

---

[6] The appellants supplemented their complaint not twice, as they assert [Brief of Appellants on the Merits 23] but three times. J.A. 78, 90, 110. The lower court ruled against the appellants regarding the 1980 actions of the Edgefield County Council [J.S. App. 18a] but apparently they do not appeal that holding.

[7] The three-judge district court consists of the Honorable Clement F. Haynsworth, Jr., the Honorable Donald S. Russell and the Honorable Robert F. Chapman, Judges of the United States Court of Appeals for the Fourth Circuit. J.S. App. 21a. Judge Chapman, as a district court judge, also authored the "dilution issue" order of April 17, 1980, which he subsequently vacated. J.A. 76, 89.

Edgefield County Council was pre-cleared by the United States Department of Justice when it pre-cleared Act No. 521 of 1971. The 1971 statute provides for the at-large election of five Edgefield County Council members from five residency districts to serve two year terms of office and it has been in force in every general election since 1972. The United States Attorney General's attempt to require the submission now, more than a decade after it was last in effect, of the unpre-cleared 1966 enactment which Act No. 521 of 1971 amended is in fact and in effect an attempt to modify his 1971 pre-clearance which he is precluded from doing. Morris v. Gressette, 432 U.S. 491 (1977).

The lower court was also correct in finding that the Attorney General's outstanding objection to the 1976 Edgefield County ordinance which formally continues the provisions of Act No. 521 of 1971 on the ground that the expansion of powers granted

to South Carolina counties by the 1975 enactment of general law provisions is a "change" subject to Section 5 pre-clearance is without merit because the expansion of powers, if a change at all, was pre-cleared in 1975.

ARGUMENT

THE DISTRICT COURT WAS CORRECT IN HOLDING THAT THE CURRENT METHOD OF ELECTING THE MEMBERS OF THE EDGEFIELD COUNTY COUNCIL HAS BEEN PRE-CLEARED BY THE UNITED STATES DEPARTMENT OF JUSTICE PURSUANT TO SECTION 5 OF THE VOTING RIGHTS ACT OF 1965.

A. Act No. 1104 of 1966.

There is no dispute that Edgefield County is a political subdivision subject to the pre-clearance provisions of Section 5 of the Voting Rights Act of 1965. J.A. 139; J. S. App. 6a. There is also no dispute that the first Section 5 "change" which occurred in Edgefield County was the enactment of Act No. 1104 of 1966. [8/] The lower court found

---

[8/] The first three sections of Act No. 1104 divided Edgefield County into three residency districts for the purpose of electing the

that the 1966 legislation had not been pre-cleared [J.S. App. 6a] and there are no records discovered to date which manifest that it was submitted either to the District Court for the District of Columbia or to the United States Attorney General for pre-clearance. J.A. 131. [9/] That finding would

---

[8/] cont. county governing body, provided for the creation of a system of county government in Edgefield County and created the Edgefield County Council, respectively. The remaining seven sections provided for its functioning and powers. J.A. 154.

[9/] Although the lower court has found that the 1966 statute was not submitted for pre-clearance, the appellees note that the inability to locate any record manifesting the submission does not necessarily prove that there was no submission. At least twice already in this action, records of Section 5 submissions which could not be located at the time they were sought were subsequently found. J.A. 219; Brief for the United States as Amicus Curiae 8. Furthermore, there is nothing in the record before this Court to indicate whether or not any procedure is (and has been since 1966) in place within the Justice Department for handling and safeguarding individual submission files. Finally, in Perkins v. Matthews, 400 U.S. 379 (1971), this Court noted that "... only South Carolina has complied rigorously with §5. Through June 1969, it submitted 252 changes for approval, including all three annexations

be significant, indeed, determinative but for the fact that the election provisions of Act No. 1104 have not been in effect since 1971.[10/]

B. Act No. 521 of 1971.

I. Act No. 521, which amended the election provisions of Act No. 1104 of 1966, was submitted to the United States Attorney general pursuant to Section 5 and was pre-cleared.

On June 25, 1971, the South Carolina General Assembly enacted Act No. 521 of 1971 entitled "An Act To Amend Act 1104 Of 1966, As Amended, Relating To A System Of County

---

9/ cont. (and one consolidation) that were approved by the state legislature between 1965 and 1969." 400 U.S. at 393, n. 11. By the end of 1970 it had made 441 submissions, none of which was objected to, and was the only covered jurisdiction with such a record at that time. See Hearings on H. R. 939... before Subcommittee on Civil and Constitutional Rights of House Judiciary Committee, 94th Cong. 1st Sess. ser. No. 1, pt.1, 537 (1975); Hearings before Subcommittee on Civil and Constitutional Rights of House Judiciary Committee on Extension of Voting Rights Act, 97th Cong., 1st Sess. ser. No. 24, pt. 3, 2239 (1981).

10/ The "powers" provisions have not been in effect since 1976. Infra at 50.

Government For Edgefield County, So As To Increase The Number Of Districts And The Number Of County Council Members." J. A. 167. Section 1 of Act No. 521 amended Section 1 of the 1966 statute, which had set forth the three residency districts for the three-member Edgefield County Council, by "striking it out and inserting" a new Section 1. Id. New Section 1 set forth five new residency districts for a five-member Edgefield County Council. Section 2 of Act No. 521 amended Section 3 of the 1966 statute, which had created the Edgefield County Council and provided for its at-large election for two year terms, by "striking it out and inserting" a new Section 3. J.A. 168. New Section 3 provided for the at-large election of the new five-member Edgefield County Council to serve two year terms. Id. The remaining provisions of the 1966 statute were not affected by the 1971 amendment.

The South Carolina Attorney General

submitted Act No. 521 (designated as "H2206"), together with seventeen other pieces of legislation enacted in 1971, to the United States Attorney General for Section 5 pre-clearance on July 21, 1971. Brief for the United States as Amicus Curiae App. 1a. Thereafter, the Justice Department asked for additional information including boundary maps of both the then-existing residency districts and the proposed districts, population and registration statistics for the two sets of districts, candidates for and results of the last two Edgefield County Council primary and general elections and "a copy of the election statute now in force." J.A. 238. The available additional information requested was forwarded to the Justice Department on September 24, 1971, [J.A. 244] and included as a part of that information a copy of the election provisions of Act No. 1104 of 1966. J.A. 247. Then, on November 24, 1971, the United States Attorney

General forwarded to the State Attorney General's office his letter pre-clearing Act No. 521. J.A. 125.

II. The pre-clearance of Act No. 521 of 1971 pre-cleared the at-large with residency districts election of a five-member Edgefield County Council for two year terms of office.

First, as Act No. 521 manifests, it provides completely for the membership and election of the Edgefield County Council without reference to the 1966 statute except to, in effect, repeal it pro tanto and substitute new provisions which are the same as the 1966 statute in some respects and different in others. One of the lower court's findings is to the same effect:

> Analysis of the language of the two acts - 1966 Act No. 1104 and 1971 Act No. 521 - compels rejection of plaintiffs' contention that failure to submit Act No. 1104 dooms the present method of electing the Edgefield County Council. Although Act No. 521 changed only the number of residency districts and members of the council, the Act provides for the 'striking out' of all provisions of the 1966 Act dealing

> with the form and method of electing county council. The Act then substitutes completely new provisions for the form and method of election of Edgefield County Council, including provisions for the at-large with residency requirement form of election. J.S. App. 13a.

The Edgefield County Council provided for by Act No. 521 was to be made up of five members, not three, from five new, not two additional, residency districts. 11/ They were to be elected at-large from the county for two year terms as the three-member

---

11/ The three 1966 districts were prescribed as follows: District No. 1 included Johnston No. 1, Johnston No. 2, Long Branch, Central & Bacon precincts; District No. 2 included Trenton, Merriwether, Colliers, Cleveland and Red Hill precincts; and District No. 3 included Edgefield No. 1, Edgefield No. 2, Kendall, Moss, Rock Hill, Pleasant Lane and Meeting Street precincts. J.A. 154. The five districts created in 1971 were prescribed as follows: District No. 1 included Johnston No. 1, Johnston No. 2 and Long Branch precincts; District No. 2 included Trenton, Central and Bacon precincts; District No. 3 included Edgefield No. 1 and Edgefield No. 2 precincts; District No. 4 included Merriwether, Colliers, Cleveland and Kendall precincts; and District No. 5 included Red Hill, Rock Hill, Moss, Meeting Street and Pleasant Lane precincts. J.A. 168.

predecessor council had been. The fact that the title described only the two changes does not sustain the appellants' argument that the Attorney General pre-cleared only those two changes for to argue that the Attorney General pre-cleared only the changes described in the title is to presume that he read no further than the title and therefore pre-cleared only the title. This presumption is borne out neither by reason nor by the Attorney General's subsequent actions.

The Attorney General's subsequent actions provide the second reason that the lower court's decision regarding the scope of the 1971 pre-clearance is correct. He wrote to the submitting officials asking for certain information so that he could make a determination based on "sufficient data." J.A. 238. He requested, inter alia, "a copy of the election statute now in force." Id. [emphasis added]. The election provisions of

the 1966 statute, not merely "the existing three election districts" as the appellants assert, [12] were promptly forwarded to him. He also requested and received maps showing the boundaries of the three predecessor districts and the five new districts, the voter registration by race for the two sets of districts and the candidates for and results of the past two Edgefield County Council primary and general elections. J.A. 238, 246. The requested population information was not available and he was so advised. Id.

What did the United States Attorney General then do? (1) He did not request a

---

[12] Appellants' Brief on the Merits 11. The appellants emphasize the fact that only the first page of the five-page 1966 statute was forwarded, arguing that that action is "evidence that the State itself regarded the 1971 submission as involving only an increase in the size of the Council." Id. 48, n.18. On the contrary, only the election provisions (all of which were included on the first page) were forwarded because they were the only ones requested and, the appellees submit, relevant.

complete copy of the 1966 statute; (2) he did not request a copy of the letter pre-clearing the 1966 statute; and (3) he did not ask for a copy of the election statute in force on November 1, 1964 - all of which actions were available to him in his discretion. See Garcia v. Uvalde County, 455 F. Supp. 101, 105 (1978), aff'd 439 U.S. 1059 (1979). Instead, his next action was to pre-clear Act No. 521 of 1971. 13/ That he pre-cleared the 1971 statute upon receiving the requested information manifests, first, that he then had "sufficient data" on which to base his

---

13/ To argue, as the appellants do [Appellants' Brief on the Merits 11], that the pre-clearance letter relates only to the increased membership argues against the express language of the pre-clearance letter which states in part:

> The Attorney General interposes no objection to the change in question. J.A. 125.

It does not restrict its conclusion to the increase in membership only but, instead, does not object to the "change in question," i. e., the 1971 enactment itself. The phrase "change in question" is in fact form language routinely used by the Justice Department in its letters approving legislation. Docket Sheet entry of July 20, 1981 (Exhs. 1, 2 and 3).

decision. Second, with the election provisions of the 1966 statute before him, he either determined that those provisions had in fact been pre-cleared [supra, n. 9 at 17] or he determined that they were no longer relevant because they had been superseded by the 1971 statute. The appellants' assertion that the Attorney General pre-cleared only the increased membership unrealistically and unreasonably assumes that the Attorney General, with the 1966 election provisions before him, compared those provisions (which, he now asserts, were never approved) with the 1971 statute and decided to interpose no objection to its increased membership feature without passing upon the validity of its at-large with residency districts or two year terms of office features. But the possible discriminatory purpose or effect of the increased membership could not have been determined "in isolation from the 'preexisting' elements" of the method of

electing the Edgefield County Council. City of Lockhart v. United States, __ U.S. __, 74 L.Ed. 2d 863 at 870, 103 S.Ct. 998 (1983). [14/] Moreover, as argued earlier [supra at 22], the 1971 statute did not merely increase the membership or the number of residency districts - it created five new residency districts for a new five-member Edgefield County Council elected at-large for two year terms.

The lower court characterized the Attorney General's actions regarding the 1971 submission as follows:

> Plaintiffs' arguments would require this court to find that the Attorney General did not consider the effect of at-large, as opposed to district, voting when he elected not to object to 1971 Act No. 521. Analysis of both the facts before the Attorney General and his

---

14/ The Attorney General could have objected to the five new districts in the context of the unchanged (and presumably pre-cleared) at-large with residency districts method of election [id.], which would have rendered unenforceable the entire method of election provided for, including the at-large with residency districts feature.

requests for additional information do not bear out plaintiffs' argument.

Although 1971 Act No. 521 is entitled 'An Act To Amend Act 1104 of 1966 . . . So As To Increase The Number of Districts And The Number of County Council Members,' every indication is that the Attorney General did not limit his consideration of the Act to the change in number of districts and number of council members. In the late summer of 1971, David L. Norman of the Justice Department contacted state officials and requested additional information in connection with the evaluation of Act No. 521. Norman asked that the State provide 'maps showing the boundaries of the County Council districts under the existing statute as well as under [Act No. 521].' He also requested 'population and registration statistics, by race, for the present election districts and the proposed election districts as well as a copy of the election statute now in force.' (emphasis added). Mr. Norman additionally stated, 'It will also be necessary for us to know the names, and race, of all candidates for County Council in the last two primary and general elections, and the results of these elections by district.' All of the requested information was submitted to the Justice Department except the population of the election districts by race, which information was not available.

> The information requested and received by Norman indicates that he had the 1966 Act before him and was aware that the form and method of election of the Edgefield County Council then in effect had been adopted in 1966. Norman's letter requesting information about the former districts and results of elections by race indicates that Justice Department's review of Act No. 521 encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966. J.S. App. 10a - 12a [emphasis original].

The appellants rely heavily on language in Allen v. State Board of Elections, 393 U.S. 544 (1969), followed in United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978), and in City of Rome v. United States, 446 U.S. 156 (1980), that a Section 5 submission to the United States Attorney General must be made in an "unambiguous and recordable manner ... with a request for his consideration pursuant to the Act." 393 U.S. 571. The appellees have no argument with that language; indeed, they followed it precisely when they

submitted Act No. 521 of 1971. They submitted the statute, together with seventeen others, to the United States Attorney General "[i]n accordance with the provisions of Section 5 of the Voting Rights Act of 1965." Brief for the United States as Amicus Curiae App. 1a. They promptly responded to the Attorney General's request for additional information. J.A. 237-248. The Attorney General's request manifests that he was in fact considering the statute pursuant to his Section 5 authority. These facts are not even remotely similar to those in Allen, where service of a covered jurisdiction's brief on the Attorney General was held not to be a sufficient submission, in Board of Commissioners of Sheffield, Ala., where the pre-clearance letter was expressly conditional, or in City of Rome, where the pre-clearance of general law provisions containing a municipal election code did not

pre-clear local variations. 15/

Instead, the appellees urge that Edgefield County's facts are similar to those found in United States v. Georgia, Civil Action No. C76-1531A (N.D. Ga. September 30, 1977), aff'd 436 U.S. 941 (1978). There, a pre-November 1, 1964, Georgia statute completely revised that State's general election code. The statute provided that it

---

15/ Furthermore, in Allen, unlike here, the submitting authorities admitted that they had made no "formal" submission to the Attorney General. 393 U.S. 571. In Board of Commissioners of Sheffield, Ala., this Court rejected the argument that the Attorney General "should be charged with notice of all provisions of local law." 435 U.S. 137, n. 28. Here, the Attorney General had actual notice of the provisions of the 1966 statute. Also, while this Court rejected the "pre-clearance by silence" argument in Sheffield [id. at 136-138], here the Attorney General affirmatively decided not to object. Finally, in City of Rome, the State submitted a general law stating that the State deferred to local charters and ordinances regarding specific election practices without submitting those local charters and ordinances. Here, the appellees submitted precisely what they wanted pre-cleared, i. e., the method of election provided by Act No. 521 of 1971.

did not go into effect for county elections until after the 1964 general election and the district court held, first, that the changes effected by the statute were Section 5 changes because they were not in force on November 1, 1964. The 1964 statute had never been submitted but Georgia contended that the United States Attorney General had had four occasions to review it when, in reviewing revisions to the code in 1968, 1969, 1970 and 1971, "he could have discovered that the complained of provisions had taken effect with regard to candidates for governing office of a county after November 1, 1964." No. C76-1531A, slip op. at 5. The Court declared:

> ...Central to the question of whether the provisions complained of have, in fact, been precleared is a determination of what constitutes a 'submission' of a change within the meaning of the Voting Rights Act of 1965. Prior to September, 1971, there were no regulations specifying the proper manner in which a submission should be made....
>
> ****

> In the absence of any requirement that a specific submission procedure by followed, this court finds that the submission of the entire election code of Georgia to the Attorney General with the request that he consider any changes constituted a submission of the matter to the Attorney General in an unambiguous and recordable manner as required by Allen. Id. at 5-6.

The pre-clearance of the revised election code in 1970, the court concluded, also pre-cleared two provisions retained therein from the 1964 statute notwithstanding they had not been specifically called to the Attorney General's attention as changes. The court rejected the Attorney General's attempted objection to those two provisions years later and this Court summarily affirmed. 16/

16/ ...Summary actions, ... should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved. Mandel v. Bradley, 432 U.S. 173, 176 (1977).

The appellants' attempt to distinguish the Georgia facts is unavailing. Appellants'

The appellants contend that the lower court erred when it held that the 1966 statute had been pre-cleared in the context of the 1971 statute rather than by reference to the practice in effect on November 1, 1964. Appellants' Brief on the Merits 51. The appellees respond by pointing out that apparently the United States Attorney General does not agree because his request for the election statute "now in force" is inconsistent with that contention. And when he received a copy of the election provisions of the 1966 statute, he did not then request a copy of the election statute in effect on November 1, 1964. Even assuming arguendo that the Attorney General pre-cleared only the new districts and increased membership, nevertheless he did not compare those

---

16/ cont. Brief on the Merits 40, n. 16. Here, as there, the Attorney General later interpreted the change to have been pre-cleared [J.S. App. 29a; infra at 40] and a court decision indicated that the change had been pre-cleared. J.A.; infra at 39.

features with the voting practice in place on November 1, 1964. While it is undisputed that Section 5 specifies November 1, 1964, as the relevant date and while the Attorney General may have erred in not comparing the 1971 statute to the voting practice in effect on November 1, 1964, that error should not be charged against the lower court or the submitting officials. 17/

The appellants also argue strongly that both the United States Congress and the decisions of this Court place upon the covered jurisdictions the burden of complying with the Section 5 pre-clearance requirements. The appellees agree with this statement of the law and assert equally strongly that they met that burden, first,

---

17/ ... Congress - like the courts - operates on the assumption that the Attorney General of the United States will perform faithfully his statutory responsibilities. Morris v. Gressette, 432 U.S. 506, n. 23.

when they submitted Act No. 521 of 1971 for pre-clearance and, finally, when they complied with the Attorney General's request. Notwithstanding the appellants' highly offensive characterization of the lower court's order as one which allows covered jurisdictions to make "a shell game out of Section 5" [Appellants' Brief on the Merits 63], there is no evidence that Edgefield County has done anything but make a good faith attempt to comply with Section 5, a law whose "potential severity" and "extraordinary remedy of postponing the implementation of validly enacted state legislation" this Court has repeatedly recognized. Morris v. Gressette, 432 U.S. 504.

III. The Justice Department's regulations neither are nor should be controlling here.

There is no dispute that the Justice Department did not promulgate Section 5 guidelines until September, 1971. Appellants' Brief on the Merits 41. But Act

No. 521 of 1971 was submitted on July 21, 1971 [Brief for the United States as Amicus Curiae App. 1a], two months before their publication. The appellants' assertion that the guidelines were published "two weeks before South Carolina responded to the Department of Justice's request for additional information" [Appellants' Brief on the Merits 41] is answered by pointing out that the Attorney General was free, perhaps, duty-bound, to require the appellees to conform their submission to his new guidelines, if he felt that it was necessary, when he requested the additional information on September 14, 1971, four days after the guidelines were published. J.A. 241. Significantly, he did not even mention the new guidelines in his request. Because it is the Attorney General's duty to enforce his guidelines [cf. Morris v. Gressette, 432 U.S. 491, 506, n. 23; Service v. Dulles, 354 U.S. 363, 372 (1957); Harris v. Levi, 416 F. Supp.

208, 210 (D.D.C. 1976), aff'd in part and vacated in part on other grounds and remanded sub nom. Harris v. Bell, 562 F.2d 772 (D.C. Cir. 1977)], if he does not, he should be deemed either to have determined that they are being complied with (as the appellees submit they were in 1971) or to have waived them. And even less can the 1976 and 1981 amended guidelines be applied retroactively to the 1971 submission. See Miller v. United States, 294 U.S. 435, 439 (1935); Compare Automobile Club of Michigan v. C.I.R., 353 U.S. 180, 184 (1957).

The appellees submit that there is an additional reason that the guidelines should not control here, a reason far more compelling that the fact that they were not in effect when the submission was made. The court in United States v. Georgia, supra, referred to it as a "general acceptance" of the fact that the provisions subsequently challenged were in fact earlier pre-cleared.

No. C76-1531A, slip op. at 7. For nine years and through at least two submissions, all concerned parties (including the United States Attorney General) assumed that the current method of electing the Edgefield County Council was prescribed by Act No. 521 of 1971, which had been pre-cleared in 1971. First, the members of the Edgefield County Council assumed it for they have been elected pursuant to its provisions beginning with the 1972 general election. J.A. 140. Second, the appellants assumed it for their original 1974 complaint contained allegations naming only the 1971 statute as the statute prescribing the method of election. J.A. 12. Third, the district court's vacated "dilution issue" order recited only that the 1971 statute had been submitted and pre-cleared [J.A. 43], implying, the appellees submit, that the pre-clearance of the 1966 statute was irrelevant. Fourth, the South Carolina Attorney General assumed it as evidenced by

that office's response to the United States Attorney General's December 12, 1980, letter requesting that the 1966 statute be submitted. J.A. 213. Finally, that the United States Attorney General assumed it for nine years in manifested by his actions during that time. To begin with, he pre-cleared the 1971 statute with actual notice of the election provisions of the 1966 statute. That was his first opportunity to verify whether or not the 1966 statute had been pre-cleared and, if not, whether or not it mattered. Then, in 1974, when he declined to object to another amendment to the 1966 statute [J.A. 220], he had a second opportunity to analyze the 1966 statute if he had thought it relevant. Most significant, however, is his 1979 objection to the Edgefield County ordinance and resolution continuing the method of election prescribed in Act No. 521 of 1971, to wit:

> ... Our analysis reveals that ... under the proposed ordinance

> implementing Home Rule, council members will be elected at large from residency districts. While this is, ostensibly, the same system of election used by the county in electing its present council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act. J.S. App. 29a - 30a [emphasis added].

The fact that the method of election was ostensibly unchanged would not have been relevant had the Attorney General not interpreted that method of election as already having been pre-cleared.

This nine-year interpretation on the part of the United States Attorney General that he had pre-cleared the method of electing the Edgefield County Council is, the appellees submit, the one which this Court should find is entitled to weight. The appellants' repeated assertion that the Attorney General's 1980 "please submit" letter reflects a "consistent" interpretation of the scope of his 1971 pre-clearance and is therefore entitled to deference totally

ignores nine years of inaction by the Justice Department based on a contrary interpretation. And to argue, as they do, that the lower court "disregarded" the Attorney General's 1980 interpretation when it concluded that "every indication is that the Attorney General did not limit his [1971] consideration" [Appellants' Brief on the Merits 39-40] [emphasis added] is to implausibly give the 1980 interpretation nine years' retroactive effect. Again in United States v. Georgia, supra, the district court responded appropriately, the appellees contend, to a similar assertion:

> Although arguments of waiver and estoppel have been abandoned by the State, the court is constrained to note that the Attorney General's delay of eleven years in bringing an action ... to force the State to submit the complained of provisions to a preclearance procedure is inexcusable .... For the Justice Department to attack provisions ... which have been in effect for eleven years on the sole basis that said provisions have not been precleared and with no allegations that these provisions are in any manner violative of the letter or

> the spirit of the fifteenth amendment to the United States Constitution borders on the absurd. C76-1531A, slip op. at 7 [emphasis added]. 18/

The district court's opinion in United States v. Georgia echoes this Court's injunction that there is "to be 'no dragging out' of the extraordinary federal remedy beyond the period specified in the statute." Morris v. Gressette, 432 U.S. 504.

IV. The pre-clearance of Act No. 521 of 1971 renders moot the Attorney General's 1980 "please submit" letter.

Assuming that the 1966 legislation was required to be submitted for pre-clearance before implementation and assuming further that it was not in fact submitted, the issue of whether or not it complies with the 1965

18/ Significantly, the appellants' amended complaint alleging that the 1966 statute has not been pre-cleared does not contain any allegation that the statute violates the Fifteenth Amendment or otherwise has a racially discriminatory purpose or effect. J.A. 110. See, e.g., United States v. Saint Landry Parish School Board, 601 F.2d 859, 865 (5th Cir. 1979).

Voting Rights Act became moot when the 1971 legislation was enacted and subsequently pre-cleared. The appellants' position that the 1966 legislation, which is not in force at the present time, has not been in force for over a decade and as to which no attempt at enforcement is being made, is subject to Justice Department review was rejected by the lower court:

> ... Since the Attorney General approved the at-large with residence districts form of elections in 1971, any defect in the 1966 Act No. 1104 is moot. J.A. App. 12a.

That the issue of whether or not the 1966 legislation was implemented without pre-clearance is not a justiciable one is further evidenced by the difficulty of fashioning appropriate relief should this Court reverse the lower court's holding that the 1966 statute need not be submitted to the Attorney General for pre-clearance. J.S. App. 20a. Its enforcement could not properly be enjoined because it is not being enforced;

the revival of its predecessor legislation, i. e., an appointed board of commissioners, with an appointed supervisor would violate South Carolina law, both statutory [§§ 4-9-10 et seq. CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended] and constitutional [S.C. CONST. art. VIII, § 7; Duncan v. The County of York, 267 S.C. 327, 228 S.E.2d 92, 98-99 (1976)]; and the replacement of the 1966 method of election with one which has not been put into effect without pre-clearance would continue the method of election that is currently being used and has consistently been used since the 1972 general election [J.A. 140], i. e., the already pre-cleared method of election prescribed by Act No. 521 of 1971. 19/

Accordingly, the appellees submit that the lower court was correct in holding on

---

19/ The lower court concluded:

> ...It would serve no useful purpose at this late date to set aside the 1966 Act. J.S. App. 12a.

mootness grounds [20] that they are not required to respond to the Attorney General's December 12, 1980, request that they submit Act No. 1104 of 1966 for pre-clearance.

V. The method of election prescribed by Act No. 521 of 1971 is unchanged by the enactment of the "home rule" legislation and the adoption of the implementing ordinance and resolution.

Before discussing the merits of the issue regarding the "home rule" legislation and the implementing ordinance and resolution adopted by the Edgefield County Council on June 21, 1976, the appellees question whether or not that issue is still before this Court. The United States Attorney General, who appears only as amicus curiae herein,

---

[20] The appellees also note that this Court's holding that a unpre-cleared change, once pre-cleared, is no longer subject to Section 5 review for "the matter [is] at an end" [Berry v. Doles, 438 U.S. 190, 193 (1978)], can fairly be interpreted to apply here where the pre-clearance has been effected by the pre-clearance of a superseding change.

accurately states that, because he did not appeal the decision in Woods v. Hamilton, 473 F. Supp. 641 (D.S.C. 1979), he is estopped from relitigating the issue of his pre-clearance of the "home rule" legislation. Brief for the United States as Amicus Curiae 13, n. 10; Brief for the United States as Amicus Curiae Urging Reversal 23. He offers his argument relitigating that issue apparently only in support of the appellants, who are not so estopped. Id. But the appellants seem to retreat from this issue, asserting that this Court "need not reach the issue whether the 1976 transfer of powers is a covered change and whether the Attorney General's objection is enforceable." Appellants' Brief on the Merits 59. 21/

21/ It also appears that they no longer dispute that the lower court acted within its authority in determining whether or not the Attorney General's outstanding objection to the 1976 ordinance and resolution is a valid one. Compare J.S. 13-14 and Appellants' Brief on the Merits 29. The appellees refer this Court to their own earlier argument

Assuming the "home rule" issue is reached, however, the appellees submit that the lower court correctly applied the Woods v. Hamilton holding as follows:

> Plaintiffs argue that implementation of the Home Rule Act in Edgefield County was a change in election procedure subject to § 5 of the Act. This issue was addressed in Woods v. Hamilton, supra at 644-47, where the court held that the ministerial act of passing ordinances implementing the Home Rule Act (which Act had previously been precleared) in Charleston County, were not "changes" covered by § 5 of the Voting Rights Act. Id., at 647. ... We hold that the Attorney General's June 27, [sic] 1975 letter to state officials precleared both the holding of referenda and the transfer of powers under the Home Rule Act. We also hold that the June 21, 1976 resolution and ordinance resulted in no change in the form or method of electing Edgefield County Council, and that the June 21 resolution and ordinance are not a change subject to § 5 preclearance. ... J.S. App. 16a - 18a.

21/ cont. [Motion to Dismiss or Affirm 12-14] in the event that the appellants do in fact continue to dispute the lower court's holding in this regard. See also Garcia v. Uvalde County, 455 F. Supp 101 (1978), aff'd 439 U.S. 1059 (1979); Georgia v. United States, 411 U.S. 526 (1973).

Woods v. Hamilton discussed in detail the history of the submission and pre-clearance of the "home rule" legislation in 1975. 473 F.Supp. 644 - 647. It first noted that:

> It is apparent from the [submission] letter that the State submitted the entire Home Rule Act to the United States Attorney General for his consideration within the sixty-day statutory period. For the purposes of this opinion, the main features of the submitted Act were threefold:
>
> 1. It authorized the permissive holding of a referendum by each county to determine a form of government which additionally included a method of election. (S.C. Code § 4-9-10(a), (b)).
>
> 2. It transferred to the counties, regardless of the choice made in (1), substantial powers. (S.C. Code § 4-9-30).
>
> 3. It mandated the assumption - (either by choice or inaction) - of a particular form of government by each county. (S.C. Code § 4-9-10). 473 F.Supp. 644-645 [emphasis original].

After quoting the Attorney General's approval letter in its entirety, the court concluded:

> A close reading of this letter reveals that (1) the Attorney

> General expressly did not object to the holding of a referendum; (2) he attempted to reserve the right to object to the implementation in the counties of the several forms of government - (which by statute included the methods of election, S.C. Code § 4-9-10(b)); and (3) he made no mention of the transfer of powers. A review of the applicable legal principles convinces this court that the effect of the letter was to preclear both the holding of referenda and the transfer of powers, so that these matters could proceed without further preclearance. This determination, combined with this court's finding that there was no change as to the method of election and form of government - (see fn. 7, supra) - leads to the conclusion that Charleston County has, based on the letter of August 28, 1975, from the Attorney General of the United States, made a valid transfer of powers to its local governing body. Id.

The Court then applied the holding in Morris v. Gressette, 432 U.S. 491 (1977), that the Attorney General has only sixty days in which to respond to a completed submission, and declared:

> ...Here, the Attorney General's silence on the transfer of powers in the Home Rule Act clearly dooms

his belated attempt to label the assumption of such powers by the county council as an 'uncleared change.' Whatever may have been the motive of the Attorney General in failing to object to the transfer of powers in his August 28, 1975, letter, the fact remains that the State submitted the entire Home Rule Act and, under the law, the Attorney General of the United States was required to pass on all components of a complete submission at that time (i. e., at the least, those steps in the submission certain to occur without further action, or requiring only further ministerial action on the part of the state political entity). In this respect, the case differs significantly from the situation in United States v. Board of Commissioners of Sheffield, Alabama, in which case the city submitted a letter which 'sought approval only for the holding of the referendum' (98 S.Ct. at 982). In that case, the Attorney General was informed in the submission letter that if the holding of a referendum was precleared, and the proposal to change the form of government was approved in such referendum, the city would, under the statutory law, revert to a prior form of government; however, the submission letter did not request preclearance of the form-of-government 'change' but the letter merely volunteered such information in the submission statement. Since the question of preclearance of the admitted 'change' to a different form of government was not presented to the

> Attorney General, the Supreme Court held that when that 'change' was, in fact, accomplished, it would have to be submitted. In the present case, however, the mandatory transfer of powers was submitted to the Attorney General, and he was charged with the knowledge from a review of the Act that, regardless of the form of government chosen or assigned, the new government would assume the enumerated powers. In this posture, it is an inescapable result, in this court's opinion, that the failure to object to the transfer of powers precleared that 'change' - (assuming, arguendo, that such transfer was a 'change') - depriving the Attorney General of a 'second bite at the apple' at any subsequent time. The situation here closely resembles that found in United States v. Georgia, ... In the instant case, whether by oversight or design, the Attorney General did not object to the mandatory transfer of powers, and he is bound by his inaction. 473 F.Supp. 646-647 [citations and citations to footnotes omitted] [emphasis original].

The appellees submit that the Woods v. Hamilton reasoning and result are manifestly correct and should be followed here. The expansion of powers granted to the Edgefield County Council by the "home rule" legisla-

tion, if a Section 5 change at all, [22] was precleared by the pre-clearance of the "home

---

[22] Although it is argued that the issue of whether or not a transfer of powers is a change within the meaning of Section 5 is not before this Court [Brief for the United States as Amicus Curiae Urging Reversal 21-22], the appellees would reverse the Attorney General's assertion [id.22, n. 18] and note that no court has held that a transfer of powers is a Section 5 change. The appellants' contention to the contrary notwithstanding [Appellants' Brief on the Merits 57, n. 20], Horry County v. United States, 449 F.Supp. 990 (1978), accepts that theory merely as an "alternate reason" for its finding that Horry County was in violation of Section 5. 449 F.Supp. 995; see also Woods v. Hamilton, 473 F.Supp. 644. The appellees earlier distinguished Horry County from this case in other respects. See Motion to Dismiss or Affirm 18-20. That the Voting Rights Act does not contemplate that a transfer of powers alone is a covered change is manifested by the words of the statute itself. It speaks of changes "with respect to voting." In Allen v. State Board of Elections, 393 U.S. 544, 566, 568 (1969), this Court declared that Section 5 relates to even the most minor change in state "election" law. In Perkins v. Matthews, 400 U.S. 379, 387 (1971), this Court characterized Allen as holding that the legislative intent was to reach any state enactments "which altered the election law." The Attorney General's guidelines define a change "affecting voting" as a Section 5 change. 28 C.F.R. § 51.2(d); see also 28 C.F.R. § 51.12.

rule" legislation. 23/

Furthermore, the appellants have agreed that the provisions of the "home rule" legislation as applied to the Edgefield County Council continue "the method of election (at-large with residency districts) prescribed by Act No. 521 of 1971. J.A. 140 [emphasis added]. If the appellees are correct that the Attorney General pre-cleared Act No. 521 of 1971 in its entirety [supra at 21], then the pro forma adoption of the June 21, 1976, ordinance and resolution has not

---

23/ See also State Board of Election Commissioners v. Evers, 405 U.S. 1001, 1003 (1972) (Blackmun, J., concurring):

> Section 5, it seems to me plainly and clearly provides that if the procedure has been properly submitted to the Attorney General, as it was, 'and the Attorney General has not interposed an objection within sixty days after such submission,' as he did not, the proposed statutory changes 'may be enforced' without the Court proceeding in the District of Columbia and without resubmission to the Attorney General. [Emphasis added.]

effected a Section 5 change. Instead, as Woods v. Hamilton noted, "it is doubtful that the ministerial act of passing adoptive ordinances, such as done here, was ever intended by Congress to be a 'change' when such adoptive ordinances merely implemented statutes which had previously been pre-cleared." 473 F.Supp. 641. See also Jenness v. Little, 306 F.Supp. 925, 927 (N.D. Ga. 1969) (municipal ordinance adopted pursuant to pre-cleared State statute not subject to separate Section 5 submission). 23/ And contrary to the appellants' assertion [Appellants' Brief on the Merits 55, n. 19], the lower court's treatment of the 1976 ordinance and resolution does not contradict the logic of its earlier ruling regarding the

---

23/ The Attorney General amended his guidelines in 1981 to provide that such local implementation is in some instances subject to Section 5 review. 28 C.F.R. § 51.14. As argued earlier [supra at 38], those amended guidelines should not be applied retroactively to a 1978 submission.

statute. Even the appellants concede that the 1971 statute changed the 1966 statute. The 1976 ordinance and resolution quite simply did not change the 1971 statute.

VI. The Attorney General's pre-clearance of Act No. 521 of 1971 is not subject to judicial review.

Because the current method of electing the Edgefield County Council is prescribed by Act No. 521 of 1971, [24/] which has been pre-cleared, the appellees submit this Court need go no further in its review of this action than to apply the holding of Morris v. Gressette, 432 U.S. 491 (1977), that the United States Attorney General's decision not to interpose a timely objection to a Section 5 submission is not subject to judicial review. Cf. Briscoe v. Bell, 432 U.S. 404 (1977). This Court, in deciding in Morris v. Gressette that an objection interposed nunc pro tunc is invalid even when sanctioned by a federal district court, declared:

24/ J.A. 140; supra at 46.

> In light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions. The congressional intent is plain: The extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission. 432 U.S. 504.

Here, as in Morris v. Gressette, "[i]t is conceded that no objection [to the 1971 act] was entered within the 60-day period." 432 U.S. 499-500; J.A. 131-132. Moreover, it cannot be successfully argued that the 1971 submission was not a complete one inasmuch as pre-clearance came only after Edgefield County had fulfilled the Justice Department's request for the additional information which it deemed necessary in order to have "sufficient data" [J.A. 238] to review the submitted legislation. And unlike the alternative pre-clearance method provided by the District Court for the District of

Columbia, Section 5 pre-clearance by the Justice Department does not require that the United States Attorney General affirm that the change is without discriminatory purpose or effect:

> ...To the contrary, compliance with § 5 is measured solely by the absence, for whatever reason, of a timely objection on the part of the Attorney General. 432 U.S. 502 [emphasis original].

Finally, this Court recognized that even if the Attorney General's decision not to object "may have been erroneous..., it nonetheless was a decision exercised pursuant to the Attorney General's § 5 responsibilities" [432 U.S. 507 n. 24] and judicial review of it is foreclosed.

The Morris v. Gressette facts were, the appellees submit, harsher than here because in that case the failure to object was based on the Attorney General's belief that he was without authority to object. Here, with all of the information, including the election provisions of the 1966 statute, which he

deemed necessary before him, the Attorney General decided, "for whatever reason" [432 U.S. 502], not to object. The fact that this Court did not qualify its non-review policy in Morris v. Gressette even where the application of that policy may have had an arguably unintended result [25/] is a strong indication that no such qualification exists where, as here, the Attorney General, looking back a decade later, may wish to modify the scope of his decision not to object. This tardy action is precisely what the time restrictions of Section 5 review were designed to prevent [432 U.S. 503-505; see also Allen v. State Board of Elections, 393 U.S. 544, 549 (1969); Georgia v. United States, 441 U.S. 526, 538 (1973)]; otherwise, Section 5 review of a particular submission might never "come to an end." 432 U.S. 502.

25/ See 432 U.S. 508, 516, Marshall, J., dissenting.

Accordingly, the appellees submit that Morris v. Gressette precludes both the appellants and the United States Attorney General from asking this Court to review in any way that official's 1971 pre-clearance, including a review of the scope of that pre-clearance. Once the Attorney General decided not to object to Act No. 521 of 1971, his Section 5 authority over Act No. 521 of 1971 ceased. It cannot now be asserted that he did not mean what he said when he decided not to object; he may now feel that his decision "may have been erroneous" [432 U.S. 507, n. 24], but it was a decision which he exercised pursuant to Section 5 and is therefore unreviewable.

This result does not leave the appellants without a way to pursue their claim that the current method of electing the Edgefield County Council is a racially discriminatory method. The Voting Rights Act expressly does not bar constitutional

challenges to implemented legislation; indeed, there is one pending in this action. Supra at 4.

Finally, this Court should note that the black voters of Edgefield County can easily trigger a change in the method of election pursuant to Section 4-9-10(c), CODE OF LAWS OF SOUTH CAROLINA, 1976 (Cum. Supp.), which provides that ten percent of the registered voters can petition for a referendum to change to the single-member election district method of election.

CONCLUSION

The appellees respectfully submit that the judgment entered in the cause by the three-judge District Court for the District of South Carolina should be affirmed.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

TREVA G. ASHWORTH
Senior Assistant
Attorney General

Post Office Box 11549
Columbia, SC 29211

KAREN LeCRAFT HENDERSON*

Post Office Box 11458
Columbia, SC 29211
(803) 765-1885

CHARLES W. COLEMAN

Post Office Box 70
Edgefield, SC 29824

ATTORNEYS FOR APPELLEES.

*Counsel of Record

CERTIFICATE OF SERVICE

I, KAREN LeCRAFT HENDERSON, counsel of record for the Appellees and a member of the Bar of this Court, do hereby certify that, in accordance with Rule 28, three (3) copies of the Appellees' Brief on the Merits were served on all parties required to be served on this date by depositing same in the United States mail, first-class postage prepaid, and addressed to the counsel of record for the Appellants as follows: LAUGHLIN McDONALD, ESQUIRE, 52 Fairlie Street, N.W., Atlanta, Georgia 30303 and REX E. LEE, Solicitor General, Department of Justice, Washington, D.C. 20530.

This 6th day of September, 1983.

Karen LeCraft Henderson
KAREN LeCRAFT HENDERSON

Post Office Box 11458
Columbia, S.C. 29211

Office-Supreme Court, U.S.
FILED
AUG 5 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-282

In the Supreme Court of the United States

OCTOBER TERM, 1983

THOMAS C. MCCAIN, ET AL., APPELLANTS

v.

CHARLES E. LYBRAND, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE URGING REVERSAL

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

CAROLYN F. CORWIN
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
JAMES W. CLUTE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the Attorney General can be deemed to have granted preclearance pursuant to Section 5 of the Voting Rights Act to the use of at-large elections for selecting Edgefield County Council members by his failure to object to a 1971 Act that purported only to increase the size of the county council and that was submitted for review without any indication that the county wished preclearance for the use of at-large elections or that at-large elections were a change in voting practices that had never received preclearance.

2. Whether the district court erred in declining to enforce the Attorney General's objection to a 1976 Edgefield County resolution and ordinance on the ground that the Attorney General had precleared the transfer of powers to local government officials pursuant to the South Carolina Home Rule Act when he reviewed the State Attorney General's submission of that Act in 1975.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
A. Procedural history	2
B. Facts	3
C. The district court's decision	5
Summary of argument	7
Argument:	
I. The Attorney General did not preclear the 1966 change to at-large elections by failing to object to a 1971 act increasing the number of residency districts and council members	9
A. The 1966 change to at-large elections was never properly submitted for Section 5 review	10
B. The district court erred in inferring that the Attorney General evaluated the use of at-large elections when he reviewed the 1971 Act	14
C. It is reasonable to place on a covered jurisdiction the burden of identifying unambiguously those changes it is submitting for Section 5 review by the Attorney General	17
II. The district court erred in declining to enforce the Attorney General's objection to the 1976 resolution and ordinance on the ground that the Attorney General had precleared the transfer of powers to local government officials pursuant to the South Carolina Home Rule Act when he reviewed the State Attorney General's submission of that act in 1975	21
Conclusion	28

TABLE OF AUTHORITIES

Cases: Page

Allen v. *State Board of Elections*, 393 U.S. 544 10,16
Blanding v. *Dubose*, 454 U.S. 393 ..... 4, 11
City of Lockhart v. *United States*, No. 81-802 (Feb. 23, 1983) 27
City of Mobile v. *Bolden*, 446 U.S. 55 2
City of Richmond v. *United States*, 422 U.S. 358 .. 9
City of Rome v. *United States*, 446 U.S. 156 11
County Council v. *United States*, 555 F. Supp. 694 ..... 14, 16, 23
Georgia v. *United States*, 411 U.S. 526 .... 9, 17, 19, 20, 23
Herron v. *Koch*, 523 F. Supp. 167 20
Horry County v. *United States*, 449 F. Supp. 990 .. 22
Lytle v. *Commissioners of Election*, 376 F. Supp. 304, rev'd, 509 F.2d 1049, cert. denied, 419 U.S. 1032 2
Morris v. *Gressette*, 432 U.S. 491 18
Pitts v. *Cates*, 536 F.2d 56 16
Rogers v. *Lodge*, No. 80-2100 (July 1, 1982) 3
United States v. *Georgia*, Civil Action No. C76-1531A (N.D. Ga. Sept. 30, 1977), aff'd mem., 436 U.S. 941 ..... 16, 17
United States v. *Sheffield Board of Commissioners*, 435 U.S. 110 ..... 9, 11, 12, 13, 15, 17, 20
Woods v. *Hamilton*, 473 F. Supp. 641 ..... 4, 6, 22, 23, 24, 25, 26

Constitution, statutes and regulations:

U. S. Const.:
Amend. I 2
Amend. XIII 2
Amend. XIV 2
Amend. XV 2
Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, Section 3, 96 Stat. 134 3
Voting Rights Act of 1965, 42 U.S.C. (& Supp. V) 1971 *et seq.* 2
42 U.S.C. 1972 2
42 U.S.C. (& Supp. V) 1973 ..... 2, 3
42 U.S.C. 1973c ..... *passim*
42 U.S.C. 1973j(d) 2

Constitution, statutes and regulations—Continued Page

Home Rule Act, S. C. Code Ann. §§ 4-9-10 *et seq.* (Law. Co-op. 1977 & Cum. Supp. 1982) 4
§ 4-9-10(b) (Cum. Supp. 1982) 4, 5, 21
§ 4-9-30 (& Cum. Supp. 1982) 26
§ 4-9-410 26
§ 4-9-620 26
§ 4-9-820 26
§ 4-9-1030 26
1966 S.C. Act 1104 ..... 3, 10, 12, 15, 16, 17, 19, 20, 26
1971 S.C. Act 521 ..... *passim*
28 C.F.R. (1980):
Section 51.5 11
Section 51.10(a)(4) 11
Section 51.10(a)(5) 12
Section 51.10(b) 11
Section 51.18 13
Section 51.19 12
28 C.F.R.:
Section 51.8 18
Section 51.14(a) 27
Section 51.20 25
Section 51.21 12
Section 51.25(b) 12
Section 51.25(o) 12
Section 51.32 20
Section 51.35 18
Section 51.39 19
36 Fed. Reg. (1971):
pp. 9781 *et seq.* 12
pp. 18186 *et seq.* 12

Miscellaneous:

Voting Rights Act: Hearings on S. 53, S. 1761, S. 1975, S. 1992 and H.R. 3112 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. (1982) 18

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 82-282

THOMAS C. MCCAIN, ET AL., APPELLANTS

v.

CHARLES E. LYBRAND, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE URGING REVERSAL

INTEREST OF THE UNITED STATES

On October 12, 1982, the Court invited the Solicitor General to express the views of the United States in this case. We responded in a brief urging reversal, and on June 20, 1983, the Court noted probable jurisdiction.

This case raises questions concerning the preclearance of voting changes pursuant to the Attorney General's enforcement responsibilities under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. Under Section 5, the Attorney General must review changes in election laws submitted by covered jurisdictions in order to determine whether such changes have either the purpose or the effect of denying or abridging the right to vote on account of race or color. The Attorney General has authority under the Act to initiate suits to prevent imple-

mentation of changes in election laws prior to compliance with the preclearance procedures of Section 5. See 42 U.S.C. 1973j(d). The Court's resolution of the questions presented in this case will affect the Attorney General's execution of these statutory responsibilities.

STATEMENT

A. Procedural History

Appellants, black voters of Edgefield County, South Carolina, initiated this suit in 1974 against the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners, and the President of the Executive Committee of the Edgefield County Democratic Party. Appellants alleged that the county's use of an at-large system for electing members of the county council violated the United States Constitution and federal civil rights statutes [1] because it diluted black voting strength and that the residency districts from which council members ran were malapportioned. J.S. App. 2a-3a. The district court granted appellants' motion for summary judgment on the malapportionment claim, *Lytle* v. *Commissioners of Election*, 376 F. Supp. 304 (D.S.C.), but that ruling was reversed on appeal, 509 F.2d 1049, 1054 (4th Cir.), and this Court denied certiorari, 419 U.S. 1032 (1974).

Appellants' dilution claim was tried in 1975 and, after unsuccessful attempts to achieve a settlement, the district court granted judgment for appellants in April 1980. Shortly thereafter, this Court rendered its decision in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), and the district court granted appellees' motion to vacate its decision and reopened the case to permit the parties to submit additional evidence concerning whether the at-large scheme was adopted or maintained with discrimina-

---

[1] Specifically, appellants alleged violations of the First, Thirteenth, Fourteenth and Fifteenth Amendments and of 42 U.S.C. (& Supp. V) 1971, 1972, and 1973. J.S. App. 2a.

tory intent. The district court has not yet ruled on appellants' dilution claim. J.S. App. 4a-5a.[2]

The district court also permitted appellants to supplement their complaint to allege that the county's use of the at-large voting scheme violated Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, because it was a voting change implemented without the preclearance required by that statute. A three-judge district court was convened to hear appellants' Section 5 claims. J.S. App. 2a, 5a. This appeal is from that court's order (*id.* at 2a-22a) denying appellants' request for injunctive relief.

B. Facts

As of November 1, 1964, Edgefield County was governed by a three-member Board of Commissioners consisting of an elected supervisor of roads and two board members appointed by the Governor upon the recommendation of the county's state legislative delegation. In June of 1966, the state legislature enacted Act 1104, which created a three-member county council for Edgefield County with all three council members elected at-large from residency districts. It is undisputed that this Act was subject to the preclearance requirements of Section 5 but was never submitted for Section 5 review. J.S. App. 5a-6a.

In 1971, Act 1104 was amended by Act 521, "An Act To Amend Act 1104 Of 1966 * * * So As To Increase The Number Of Districts And The Number Of County Council Seats." As its title indicates, the Act increased both the number of residency districts in Edgefield County and the number of council members from three to five. J.S. App.

---

[2] Appellants have moved to reinstate the April 1980 judgment in their favor on the basis of this Court's decision in *Rogers* v. *Lodge*, No. 80-2100 (July 1, 1982), and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, as amended by Section 3 of the Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 134. The district court has taken that motion under advisement (Docket Sheet entry of Nov. 5, 1982).

6a-7a, 10a. The Act was submitted to the Attorney General pursuant to Section 5 and, after requesting and receiving additional information, on November 24, 1971, the Assistant Attorney General for the Civil Rights Division advised that "[t]he Attorney General does not interpose any objections to the change in question." J.S. App. 43a.

In 1975, South Carolina enacted the Home Rule Act, S.C. Code Ann. §§ 4-9-10 *et seq.* (Law. Co-op. 1977 & Cum. Supp. 1982). This Act transferred some powers from the state legislature to county officials and afforded each county the opportunity to hold a referendum by July 1, 1976, to determine whether to change its form of government to one of five alternative forms designated by the Act. The legislation further provided that if no referendum were held by July 1, 1976, the county would "have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date." *Id.* § 4-9-10(b). By letter of August 28, 1975, the Attorney General interposed no objection to the Home Rule Act provision that authorized local governments to hold referenda on form of government, but he reserved the right to review the form of government adopted by each local government. The letter observed that in addition to those counties that voted to adopt a new form of government "those counties which do not conduct an election to change the form of government will be assigned a form of government according to the provisions of Section 14-3701(b) of the Act [S.C. Code Ann. § 4-9-10(b) (Cum. Supp. 1982)]. This assignment of such forms of government also constitutes a change which is subject to the preclearance requirements of the Voting Rights Act of 1965."[3] See *Blanding* v. *Dubose*, 454 U.S. 393, 396 (1982).

---

[3] The text of the August 28, 1975, letter is quoted in full in the district court's opinion in *Woods* v. *Hamilton*, 473 F. Supp. 641, 645 (D.S.C. 1979), and is set forth in note 20, *infra*.

Edgefield County did not hold the referendum provided for by the Home Rule Act, but instead passed a resolution and ordinance on June 21, 1976, adopting the council-administrator form of government, the form that the legislature previously had determined was most like that already in effect in the county. S.C. Code Ann. § 4-9-10 (b) (Cum. Supp. 1982). The resolution and ordinance were submitted to the Department of Justice for Section 5 preclearance. J.S. App. 8a. By letter dated February 8, 1979, the Attorney General interposed an objection to the resolution and ordinance, noting (*id.* at 30a) that while the council-administrator form of government provided for "ostensibly, the same system of election used by the county in electing its present council, we note differences in that body as presently constituted and as it would exist under the Home Rule Act." After describing these differences and other considerations that influenced his decision, the Assistant Attorney General concluded (*id.* at 37a) that Edgefield County had not met its "burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory." He then stated (*ibid.*) that "on behalf of the Attorney General, I must interpose an objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County."

C. The District Court's Decision

Appellants argued below that the county's use of the at-large electoral scheme should be enjoined because the 1966 Act, which initiated the scheme, had never been precleared under Section 5 and, alternatively, because the Attorney General had interposed a valid objection to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system in Edgefield County.

The district court rejected both arguments. It first held (J.S. App. 10a-13a) that although the 1966 Act itself

ad not been submitted for preclearance, the change to at-large elections embodied therein had received preclearance when the Attorney General subsequently failed to interpose an objection to the 1971 Act increasing the number of residency districts and council seats. The court found that because the Attorney General, in reviewing the 1971 Act, had requested additional information, including "*a copy of the election statute now in force*" (*id.* at 11a; emphasis by the court), his review had encompassed "all aspects of the Act, including the effect of the at-large with residency requirements voting that had been implemented in 1966" (*id.* at 12a). The court further reasoned (*id.* at 13a) that the language of the 1971 Act—" 'striking out' " all the provisions of the 1966 Act relating to the form and method of election and replacing them with "completely new provisions"—provided an additional basis for inferring preclearance of the at-large features of the earlier Act.

The district court rejected appellants' alternative argument on the ground that the 1976 resolution and ordinance adopting the council-administrator form of government did not create a "change" subject to Section 5 preclearance. J.S. App. 14a-18a.[4] The court relied on *Woods* v. *Hamilton*, 473 F. Supp. 641 (D.S.C. 1979), in holding (J.S. App. 17a) that the Attorney General's (August 28, 1975) letter[5] "precleared both the holding of referenda and the transfer of powers under the Home Rule Act" and that "the June 21, 1976 resolution and

---

[4] The court held (J.S. App. 14a-16a) that appellees had standing to raise the question whether the resolution and ordinance produced a change notwithstanding the Attorney General's prior determination that those enactments did.

[5] The district court erroneously referred (J.S. App. 17a) to June 27, 1975, as the date of the Attorney General's letter preclearing some aspects of the Home Rule Act. South Carolina submitted the Home Rule Act for preclearance by letter dated June 27, 1975; the Attorney General's response was dated August 28, 1975. See *Woods* v. *Hamilton*, *supra*, 473 F. Supp. at 645.

ordinance resulted in no change in the form or method of electing [the] Edgefield County Council, and * * * are not a change subject to § 5 preclearance."

SUMMARY OF ARGUMENT

1. The district court erred in concluding that the Attorney General precleared the 1966 change to at-large elections in Edgefield County when he reviewed the 1971 Act increasing the number of residency districts and council members. The 1966 Act was never submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, although it is conceded that it should have been submitted. Although both the decisions of this Court and the Attorney General's guidelines require a clear and unambiguous statement of the changes for which preclearance is sought, neither South Carolina nor Edgefield County specifically brought the provision for at-large elections to the Attorney General's attention in the context of the 1971 submission. Neither the submission of the 1971 Act nor the provision of a copy of the 1966 statute in response to the Attorney General's follow-up request for information constituted a sufficient request for preclearance for the at-large election feature. In addition, there is no indication that in 1971 the Attorney General in fact reviewed and precleared anything other than the changes submitted to him for review, that is, the changes in the number of residency districts and size of the county council. The Attorney General himself did not consider the at-large feature of the 1966 Act to have been precleared, as his subsequent correspondence with state officials indicates.

The district court's decision improperly shifts to the Attorney General the burden of ascertaining what, if any, unprecleared changes are included in laws submitted for Section 5 review. Since only the jurisdiction knows what it wishes to have precleared, it is sensible to require

the jurisdiction to identify a submitted change, rather than to require the Attorney General to conduct an investigation to determine what is being submitted. Review by the Attorney General is meant to be a speedy alternative to judicial review of voting changes, but it can serve this function only if jurisdictions identify clearly the changes for which they seek preclearance. If jurisdictions are not required to identify such changes, they will be encouraged to make ambiguous submissions and to attempt subsequently to exploit the ambiguities, as county officials have attempted to do here.

2. The district court also erred in declining to enforce the Attorney General's objection to the 1976 Edgefield County resolution and ordinance. The court based its conclusion on its belief that the Attorney General had precleared the transfer of powers under the Home Rule Act in 1975 and that the 1976 resolution and ordinance did not change the county's form of government and therefore was not a voting change subject to preclearance under Section 5. However, the court erred in concluding that the Attorney General precleared the transfer of powers feature of home rule in 1975. As the Attorney General's August 1975 letter indicates, he precleared only the holding of referenda pursuant to the Home Rule Act, not the other features of the Act. These other features, including the transfer of powers, were not ripe for review in 1975. Thus, the 1976 resolution and ordinance implementing the transfer of powers constituted a voting change subject to preclearance, and the court should have enforced the Attorney General's objection.

ARGUMENT

I. THE ATTORNEY GENERAL DID NOT PRECLEAR THE 1966 CHANGE TO AT-LARGE ELECTIONS BY FAILING TO OBJECT TO A 1971 ACT INCREASING THE NUMBER OF RESIDENCY DISTRICTS AND COUNCIL MEMBERS

The decision of the three-judge court that the Attorney General precleared the 1966 change to at-large elections when he reviewed the 1971 Act that increased the number of residency districts and council members is erroneous under this Court's consistent interpretation of Section 5.

Section 5 of the Voting Rights Act bars certain covered jurisdictions (including Edgefield County) from implementing any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" without obtaining preclearance from the Attorney General of the United States or the United States District Court for the District of Columbia. A jurisdiction requesting preclearance under Section 5 has the burden of making a clear submission of any change in voting practices and of demonstrating that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote" (42 U.S.C. 1973c) on account of race or language minority status. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); see also *City of Richmond* v. *United States*, 422 U.S. 358, 380-381 (1975) (Brennan, J., dissenting). As the Court held in *United States* v. *Sheffield Board of Commissioners*, 435 U.S. 110, 136 (1978), "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." Contrary to the district court's conclusion, the 1966 change to at-large elections was never properly submitted to or precleared by the Attorney General.

A. The 1966 Change To At-Large Elections Was Never Properly Submitted For Section 5 Review

It is undisputed that the 1966 statute—Act 1104—which provided for at-large elections, was never submitted to the Attorney General pursuant to Section 5. Rather, in 1971 Edgefield County submitted for Section 5 review Act 521, "An Act To Amend Act 1104 Of 1966 * * * So As To Increase The Number Of Districts And The Number Of County Council Members." As its title suggests, the sole purpose of the 1971 statute was to increase the number of residency districts and, accordingly, the size of the county council. The statute accomplished that end by adding new provisions of law and by striking out and re-enacting existing provisions, including the provision for at-large elections.

Neither the district court nor appellees suggest that the provision for at-large elections was specifically brought to the Attorney General's attention in the context of the 1971 submission. The letter submitting the 1971 Act for preclearance simply stated, "[i]n accordance with the provisions of Section 5 of the Voting Rights Act of 1965, there are submitted herewith copies of the following listed acts * * *" (U.S. Amicus Br. App. 1a).[6] The letter listed 18 separate acts without further explanation of how those acts changed voting practices in South Carolina. Nevertheless, the district court ruled that the technical re-enactment in the 1971 Act of the provision for at-large elections constituted a proper submission of that provision. That conclusion cannot be squared with this Court's admonition in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), that a submission must request the Attorney

---

[6] Neither side to these proceedings was able to locate the actual letter submitting the 1971 statute for preclearance and, hence, it is not a part of the record in this case. We found a copy of the letter in our files and attached it as an appendix to our earlier submission. H2206 was the South Carolina House bill number of Act 521 of 1971.

General's consideration in "some unambiguous and recordable manner" (*id.* at 571):

> [W]e do not think the Act contemplates that a "submission" occurs when the Attorney General merely becomes aware of the legislation, no matter in what manner. * * * A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

See also *City of Rome* v. *United States*, 446 U.S. 156, 169-170 n.6 (1980). When a jurisdiction adopts legislation that makes a clearly defined change in its form of government and that also reenacts pre-existing provisions of law, the mere submission of a copy of that legislation cannot constitute an "unambiguous" request for Section 5 review of those provisions that do not purport to change the law.

This conclusion is fully supported by guidelines that the Attorney General has adopted specifying submission procedures, which this Court has held are entitled to deference. See *Blanding* v. *Dubose*, 454 U.S. 393, 401 (1982); *United States* v. *Sheffield Board of Commissioners*, *supra*, 435 U.S. at 138. The version of the guidelines that was in effect prior to the completion of the county's 1971 submission required that a submission "clearly set forth" the voting change in a manner "adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting." 28 C.F.R. 51.5, 51.10(a)(4)(1980).[7] The guidelines

---

[7] The guidelines (28 C.F.R. 51.10(b)(1980)) also

> strongly urge[d] the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:
>
> * * * * *
>
> (4) A copy of any other changes in law or administration relating to the subject matter of the submitted change

also required "[a] statement certifying that the change affecting voting has not yet been enforced or administered, or an explanation of why such a statement cannot be made." 28 C.F.R. 51.10(a)(5) (1980). Had the county complied with this requirement it would have clearly and unambiguously communicated its intent to seek preclearance for the at-large election provision by explaining why it had been in force since 1966. Since the only differences specifically called to the attention of the Attorney General were the changes in the number of residency districts and the size of the council, he was entitled to conclude that the submission was limited to the changes in law reflected in the Act's stated purpose. See *United States* v. *Sheffield Board of Commissioners*, *supra*, 435 U.S. at 137-138.[8]

---

affecting voting which have been put into effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. * * *

Proposed guidelines were published for comment before the initial submission of the 1971 Act (36 Fed. Reg. 9781 *et seq.* (1971)) and were published in final form (36 Fed. Reg. 18186 *et seq.* (1971)) several days before the submission was complete. Even though the final version of the guidelines was not in effect when the 1971 Act was initially submitted, Edgefield County thus was on notice of the kind of information and explanation the Attorney General deemed necessary to identify changes that were not readily apparent from the face of the legislation and that the duty to provide this information rested with the covered jurisdiction (28 C.F.R. 51.19 (1980)).

The guidelines that were promulgated in 1971 are cited to the 1980 edition of the Code of Federal Regulations. Those guidelines were amended on January 5, 1981 (see note 8, *infra*).

[8] The Attorney General's current guidelines are even more explicit. They state that covered jurisdictions are responsible for submitting changes that affect voting (28 C.F.R. 51.21), for providing a "clear statement of the change" in voting practices when it is not readily apparent from the face of the submission (Section 51.25(b)), and for stating whether the prior voting practice has received preclearance (Section 51.25(o)). It was not readily apparent from the face of the 1971 Act that the at-large provision was a

The district court's reliance (J.S. App. 10a-12a) on the Attorney General's routine request (see 28 C.F.R. 51.18 (1980)) for more information following his receipt of the 1971 submission also is misplaced. As the court below noted (J.S. App. 11a), the Attorney General specifically requested "a copy of the election statute now in force" and received a copy of the 1966 Act, which provided for the at-large election of county council members. He thus "had the 1966 Act before him and was aware that the form and method of election of the Edgefield County Council then in effect had been adopted in 1966" (J.S. App. 12a). But the 1966 Act did not on its face indicate that it was a change subject to Section 5. Moreover, if anything, the 1966 statute confirmed what was apparent on the face of the 1971 Act—that the voting change then being submitted was a change only in the *number* of residency districts and, hence, only in the *size* of the county council. As noted above (pages 10-12, *supra*), however, merely making the Attorney General aware of legislation enacted after the effective date of Section 5 coverage does not constitute an adequate submission. This is especially true where, as here, the jurisdiction does not even inform the Attorney General that the earlier statute was subject to Section 5 and had never received preclearance. As the Court noted in *United States* v. *Sheffield Board of Commissioners*, *supra*, 435 U.S. at 138 n.28, the burden of submission rests with the jurisdiction, and the "Attorney General should [not] be charged with notice of all provisions of local law." The Attorney General thus was entitled to assume that the at-large method of election was validly in force and therefore not subject to review at the time the 1971 Act was submitted.

The United States District Court for the District of Columbia has rejected an argument similar to that made

---

change affecting voting, nor was there any indication that this practice, which had been in existence since 1966, required, but had never received, preclearance.

by appellees and accepted by the court below. In *County Council* v. *United States*, 555 F. Supp. 694 (D.D.C. 1983), Sumter County argued that the Attorney General had precleared a 1967 change from an appointed county commission to a county commission elected at-large by virtue of his failure to object to a 1968 Act amending the 1967 Act so as to allow the commission to decide which of its members would serve four-year terms and which would serve two-year terms (*id.* at 702). Sumter County never submitted the 1967 Act to the Attorney General for preclearance, and the 1968 Act was one of seven acts that South Carolina, following its usual practice, had forwarded without explanation in a letter to the Attorney General that did not request preclearance or describe any voting changes. The district court rejected Sumter County's claim that the Attorney General's silence about the 1968 Act effected preclearance of the entire at-large election system (*id.* at 703):

> As the Supreme Court ruled in *United States* v. *Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110 (1978) * * *, a political subdivision must state that it desires preclearance before it can claim preclearance by silence. *Id.* at 136-38 * * *. That ruling applies here and requires summary judgment for defendants on plaintiffs' claim that the Attorney General's silence about Act No. 1339 of 1968 precleared an at-large election system for Sumter County.

A similar conclusion is appropriate here.

B. The District Court Erred In Inferring That The Attorney General Evaluated The Use Of At-Large Elections When He Reviewed The 1971 Act

The district court also erred in concluding that the Attorney General in fact evaluated, and therefore precleared, the change to at-large voting when he reviewed the 1971 Act. The court inferred (J.S. App. 12a) that

the Attorney General's review of the 1971 Act "encompassed all aspects of the Act, including the effect of the at-large with residency requirement voting that had been implemented in 1966" because he was provided with a copy of the existing election law as well as information concerning previous candidates, election results, and residency district boundaries. In the absence of clear evidence, however, it cannot properly be concluded that the Attorney General considered and precleared anything other than the particular change that was submitted to him for review, that is, the 1971 changes in the number of residency districts and size of the county council. In *United States* v. *Sheffield Board of Commissioners, supra*, 435 U.S. at 136-138, this Court reversed a district court holding that the Attorney General had precleared a change in the form of government when he failed to object to the county's request for approval of a referendum on that issue. The Court held that it was improper to infer preclearance of the change in form of government because the county did not comply with Section 5 guidelines for submission that require a clear statement that the county was seeking preclearance for that particular change. Likewise, in this case it was improper to infer that the Attorney General precleared all aspects of the 1971 Act, including those initially implemented in 1966.

The November 24, 1971, letter of preclearance refers only to the 1971 Act (J.S. App. 43a-44a). Moreover, while the information the Attorney General requested and received concerning the 1966 Act and its application was sufficient to enable him to make the determination whether the new residency district lines were drawn in a non-discriminatory manner, it was not sufficient for him to evaluate the 1966 change to at-large elections. If he had intended to review the at-large aspect of the voting scheme he would have needed, in addition, information concerning the *pre*-1966 method of election, in order to determine whether the change from the appointive system that was in effect on November 1, 1964, to the at-large electoral system that was inau-

gurated in 1966 had a discriminatory purpose or effect.[9] The Attorney General neither requested nor received any such information, and he therefore was in no position to evaluate or preclear the at-large feature encompassed in the 1971 Act.

Furthermore, the Attorney General himself did not consider the at-large feature of the 1966 Act to have been precleared. In a December 12, 1980, letter he advised state officials that the 1966 Act had never been submitted or precleared (J.S. App. 40a-42a). In these circumstances, the district court erred in concluding that the Attorney General in fact had evaluated and precleared the change to at-large elections.[10]

---

[9] The district court in *County Council* v. *United States*, *supra*, has under submission the question whether Sumter County's change from an appointive to an at-large electoral system violates Section 5 of the Voting Rights Act. The court denied plaintiffs' motion for partial summary judgment on that question and noted the kinds of factual and legal issues that would be pertinent to deciding compliance with Section 5, including an evaluation of how many blacks would be appointed to office if the appointive system were in effect today (555 F. Supp. at 705); whether the change to at-large voting was purposefully discriminatory (*id.* at 706); and the presence or absence of racial bloc voting (*ibid.*).

[10] This case is distinguishable from *United States* v. *Georgia*, Civil Action No. C76-1531A (N.D. Ga. Sept. 30, 1977), aff'd mem., 436 U.S. 941 (1978). There, the district court dismissed a suit brought by the United States to compel Georgia to submit for preclearance two provisions of its 1964 Election Code on the ground that, "[i]n the absence of any requirement that a specific submission procedure be followed," Georgia had complied with the submission requirements of *Allen* v. *State Board of Elections*, *supra*, 393 U.S. 544, when, in 1970, it requested that the Attorney General review the entire state election code, which included the two 1964 voting changes. *United States* v. *Georgia*, No. 77-1376 (1977 Term) J.S. App. 11a. In so holding, the court relied heavily (*id.* at 11a-12a) on a March 30, 1973, letter from the Assistant Attorney General, Civil Rights Division, that stated that one of the two changes had been precleared in 1970 and on a decision of the Fifth Circuit, *Pitts* v. *Cates*, 536 F.2d 56 (1976), that indicated that the other change also had been precleared (*id.* at 57).

Here, by contrast, there is no finding that appellees, by their 1971 submission, sought review of *all* of the provisions of Act 521.

C. It Is Reasonable To Place On A Covered Jurisdiction The Burden Of Identifying Unambiguously Those Changes It Is Submitting For Section 5 Review By The Attorney General

As we describe above, Section 5 places on covered states and political subdivisions the burden of proving to either the United States District Court for the District of Columbia or the Attorney General that any proposed change in a voting practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race * * *." 42 U.S.C. 1973c; see *Georgia* v. *United States*, *supra*, 411 U.S. at 538. The district court's decision effectively shifts to the Attorney General the burden of ascertaining what, if any, unprecleared changes are included in laws submitted for Section 5 review. That result is contrary not only to this Court's decisions and the pertinent guidelines, but also to common sense.

The requirement under Section 5 that covered jurisdictions identify the submitted change is a reasonable and necessary one. Only the jurisdiction knows what changes it wishes to have precleared. Thus, if Edgefield County wanted the Attorney General to review an unprecleared change that was not apparent from the face of the 1971 Act, it could have so stated in a letter. See *United States* v. *Sheffield Board of Commissioners*, *supra*, 435 U.S. at 138. Instead, South Carolina simply transmitted the 1971 Act and 17 other pieces of state legisla-

---

Nor is there any direct evidence, like the letter in *United States* v. *Georgia*, indicating that the Attorney General in fact precleared the 1966 change to at-large elections. To the contrary, the Attorney General's letter of December 12, 1980, correctly advised South Carolina officials that the 1966 Act had never been submitted to the Attorney General or the United States District Court for the District of Columbia for preclearance (J.S. App. 40a-42a). Moreover, the appellees in this case had the benefit of regulations promulgated by the Attorney General to aid them in formulating an unambiguous request for preclearance of the change to an at-large electoral scheme.

tion to the Attorney General without any explanation of how they changed voting practices. Common sense dictates that the Attorney General should not be required to conduct an investigation to determine what is being submitted when that information is in the control of the submitting jurisdiction.

Moreover, Congress established an administrative review process as an alternative to preclearance by the United States District Court for the District of Columbia because it wished "to provide a speedy alternative method of compliance." *Morris* v. *Gressette*, 432 U.S. 491, 503 (1977). The Attorney General must rely on covered jurisdictions to identify voting changes clearly if the administrative review process is to remain a "speedy alternative." The volume of Section 5 submissions [11] and the strict deadlines the Act imposes for objecting to changes [12] make it impractical for the Attorney General to attempt to uncover changes a jurisdiction *might* have intended to submit for review.

Had Edgefield County chosen the more burdensome alternative of seeking a preclearance declaratory judgment from the United States District Court for the District of Columbia for the 1971 Act, it would have had to file a complaint specifying the features of the Act for which it sought approval. A similar degree of specificity should be required in the case of submissions for administrative review, particularly since the same standards are applied in the judicial and administrative review

---

[11] In 1971 the Attorney General received 1,118 submissions for Section 5 review; 160 of those were from South Carolina. In 1980 the Attorney General received 7,340 submissions for Section 5 review. *Voting Rights Act: Hearings on S. 53, S. 1761, S. 1975, S. 1992 and H.R. 3112 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 1742-1743 (1982).

[12] The Attorney General has 60 days within which to interpose an objection to a change after receipt of a submission in a form that satisfies his guidelines. 42 U.S.C. 1973c; 28 C.F.R. 51.8, 51.35.

processes. See 28 C.F.R. 51.39. If lower courts may shift to the Attorney General the burden of uncovering changes that are potentially subject to Section 5 review, the result may well be to render "the formal declaratory judgment procedure a dead letter by making available to covered States a far smoother path to clearance." *Georgia* v. *United States*, *supra*, 411 U.S. at 538. In addition, allowing less specificity in the case of administrative review would invite jurisdictions to make ambiguous submissions and subsequently exploit the ambiguities by claiming that the Attorney General had precleared changes the jurisdiction did not initially submit. In fact, that is just what has occurred in this case.

It is virtually certain that neither South Carolina nor Edgefield County intended to submit the at-large election feature of the 1971 Act for Section 5 review when the state forwarded the 1971 Act to the Attorney General. The county apparently believed (albeit erroneously) that the 1966 Act had already been precleared. In 1978, the county twice claimed, in the course of submitting its home rule resolution and ordinance to the Attorney General, that the 1966 Act had received preclearance.[13] The county repeated this claim in October 1980 in opposing appellants' motion to file a second supplemental com-

---

[13] On September 29, 1978, the county's attorney wrote to the Department of Justice "enclosing herewith an Act of 1966 establishing the Edgefield County Council and amendments thereto in their chronological order, all of which have been approved by the Justice Department" (Vol. II, Lybrand Dep., Exh. G). A few months later, on December 6, 1978, the county administrator wrote a letter in connection with this submission, stating that "the implementation of Home Rule did not significantly change, alter, or increase the powers of the Edgefield County Council as set forth in Act No. 1104 of 1966 Joint Acts and Resolutions and the amendments thereto that were approved by the U.S. Justice Department" (Vol. II, Lybrand Dep., Exh. I, at 1). "Vol. II" refers to Volume II of the district court record, which consists of the deposition of Charles E. Lybrand.

plaint.[14] After the Department of Justice advised the South Carolina Attorney General's office in December 1980 that the 1966 Act had never been submitted for preclearance (J.S. App. 40a-42a), the court granted appellants' motion to amend the second supplemental complaint to allege this deficiency (Vol. I, Docket No. 42, Order of Jan. 6, 1981), and the appellants moved for summary judgment on this claim (Vol. I, Docket No. 48). At that point the county claimed for the first time that the Attorney General had precleared the use of at-large elections when he failed to object to the 1971 Act (Vol. I, Memorandum In Opposition To Plaintiffs' Motion For Summary Judgment, dated Apr. 9, 1981). The district court erred in accepting the county's after-the-fact attempt to capitalize on the ambiguity of the 1971 submission.[15]

---

[14] The county contended that the motion should not be granted because the resolution merely continued a form of government established by the 1966 Act, as amended by the 1971 Act, "both of which statutes were submitted to and pre-cleared by the United States Justice Department subsequent to their respective enactments" (Vol. I, Memorandum in Opposition to Motion for Leave to File Second Supplemental Complaint, dated Oct. 27, 1980, at 1). "Vol. I" refers to Volume I of the district court record.

[15] At the very least, any doubt concerning whether a particular voting change has been submitted or precleared ought to be resolved against the jurisdiction making the submission because it has the burden of proving compliance with Section 5 of the Voting Rights Act. See *Georgia* v. *United States*, *supra*, 411 U.S. at 536-538; *Herron* v. *Koch*, 523 F. Supp. 167, 174-175 (E.D.N.Y. 1981). If a court holds that a jurisdiction failed to make an adequate submission of a change in voting practice, the jurisdiction can always ask for expedited review of that change. 28 C.F.R. 51.32. But if a court erroneously concludes that the Attorney General has precleared a change, the purpose of Section 5, to "shift[] the advantages of time and inertia from the perpetrators of the evil to its victims" (*United States* v. *Sheffield Board of Commissioners*, *supra*, 435 U.S. at 121) is defeated.

II. THE DISTRICT COURT ERRED IN DECLINING TO ENFORCE THE ATTORNEY GENERAL'S OBJECTION TO THE 1976 RESOLUTION AND ORDINANCE ON THE GROUND THAT THE ATTORNEY GENERAL HAD PRECLEARED THE TRANSFER OF POWERS TO LOCAL GOVERNMENT OFFICIALS PURSUANT TO THE SOUTH CAROLINA HOME RULE ACT WHEN HE REVIEWED THE STATE ATTORNEY GENERAL'S SUBMISSION OF THAT ACT IN 1975

The district court erred further in declining to enforce the Attorney General's objection to the 1976 Edgefield County resolution and ordinance (J.S. App. 14a-18a).[16]

In 1976 Edgefield County enacted a resolution and ordinance [17] adopting the council-administrator form of government that, in the absence of a referendum to change the form of government, is prescribed for the county by the Home Rule Act (S.C. Code Ann. § 4-9-10(b) (Cum. Supp. 1982)). The resolution and ordinance were submitted to the Attorney General, who objected to "implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in

---

[16] We note that the jurisdictional statement (J.S. 20-22) frames this question in terms of whether a transfer of powers under home rule is a covered voting change under Section 5. As we noted in our earlier submission (at 12-13), and as we point out below (note 18), that issue is not raised by the decision in this case. We believe the thrust of appellants' second question is whether the 1976 resolution and ordinance were subject to preclearance and thus whether the district court should have enforced the Attorney General's objection.

The Court need not reach this issue if it concludes, as we contend in the preceding section, that Edgefield County never received preclearance for the change to at-large elections. In that event, the basis for the district court's conclusion that the 1976 resolution and ordinance were not a change in voting—that the form and method of electing the county council mandated by it already had been precleared (see J.S. App. 17a)—would be eliminated.

[17] Vol. I, Docket No. 51A, Stipulations, Exh. F.

Edgefield County" (J.S. App. 37a). While acknowledging that the resolution and ordinance provided for "ostensibly, the same system of election used by the county in electing its present council" (*id.* at 30a), the Attorney General nonetheless concluded that the additional powers transferred by the Home Rule Act "alter the council as the organ for the governance of the electorate and, accordingly, form the basis for evaluating the system under which the more responsible form of government ordained by the Home Rule Act is to be elected" (*id.* at 31a).

The district court refused to enforce the Attorney General's objection to Edgefield County's use of at-large elections for the county council because the court concluded that the resolution and ordinance did not create a change subject to Section 5 preclearance (J.S. App. 17a). The court based its holding on the conclusion of the court in *Woods* v. *Hamilton*, 473 F. Supp. 641, 644-647 (D.S.C. 1979), that the Attorney General had precleared the transfer of powers provided for by the Home Rule Act (as opposed to merely the holding of referenda pursuant to the Act) when that Act was submitted for preclearance in 1975 and that subsequent implementing legislation that did not change the form of government was not a change subject to Section 5 preclearance. Thus, the validity of the court's reasoning ultimately rests on whether it was correct in concluding that the Attorney General precleared the transfer of powers feature of the Home Rule Act in 1975. If the Attorney General did not preclear this transfer of powers in 1975, the 1976 resolution and ordinance implementing the transfer would be a change requiring preclearance (*Horry County* v. *United States*, 449 F. Supp. 990 (D.D.C. 1978)),[18] and the dis-

[18] As we pointed out in our earlier amicus submission (at 12-13), neither the court below nor any other court has held that a transfer of powers from state officials to county officials is not a change in voting procedures within the meaning of Section 5. Cf. *Woods* v. *Hamilton*, *supra*, 473 F. Supp. at 644. Thus, implementation of the transfer in 1976 is subject to preclearance unless that transfer was precleared earlier. The court below and the

trict court would be bound to enforce the Attorney General's objection to the change. See *Georgia* v. *United States*, *supra*. Although we presumably are estopped from relitigating the issue of whether the Attorney General precleared the transfer of powers feature of home rule in 1975 by our failure to appeal the decision in *Woods* v. *Hamilton*, *supra*, the appellants, who were not parties to that litigation, are free to present that question for review. As we explain below, we believe appellants are correct in contending that the Attorney General did not preclear the transfer of powers feature of home rule in 1975.[19]

In *Woods* v. *Hamilton*, private plaintiffs and the United States sought to enjoin officials in Charleston County, South Carolina, from implementing the Home Rule Act in that county. We took the position that the Attorney General had precleared only the holding of referenda to determine whether to change the form of government, while reserving the right to review each county's subsequent implementation of all other aspects of the Home Rule Act. That position is supported by the text of the August 28, 1975, letter, which states that the "Attorney General does not interpose an objection to the Act, insofar as it authorizes each county and city to hold a referendum on the question of the form of its government." 473 F.

---

court in *Woods* v. *Hamilton* concluded (in our view, erroneously) that the Attorney General did not preclear the transfer of powers in 1975 when he reviewed the Home Rule Act.

[19] We contended in *Woods* v. *Hamilton* that the Attorney General did not preclear the transfer of powers feature in 1975. The court rejected our view, and we did not appeal. Thereafter, in *County Council* v. *United States*, *supra* (see 555 F. Supp. at 704), we stated in our brief that the transfer of powers feature was ripe for review in 1975 and was precleared by the Attorney General then; in light of our failure to appeal *Woods* v. *Hamilton*, we presumably could not have taken a contrary position. However, we continue to believe that this issue was wrongly decided in *Woods* v. *Hamilton*, and it is this view that we set forth below.

Supp. at 645.[20] The letter goes on to reserve the right to consider the adoption of a form of government by those counties that would choose a new form of government

---

[20] The full text of the August 28, 1975, letter (473 F. Supp. at 645) is as follows:

> This is in reference to the South Carolina Home Rule Act (R. 396), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on June 30, 1975.
>
> The Attorney General does not interpose an objection to the Act, insofar as it authorizes each county and city to hold a referendum on the question of the form of its government. However, because the Act requires additional action by the State Legislature prior to each of the State's 46 counties adopting a form of government under this Act, it will be necessary that each such form of government be submitted for federal review under Section 5 of the Voting Rights Act. It is our understanding that the additional action required by the Legislature includes providing for the number of the councilmen or commissioners for those counties which select an at-large method of election and, in addition, designating the districts for counties selecting district elections of county officers. In addition, those counties which do not conduct an election to change the form of government will be assigned a form of government according to the provisions of Section 14-3701(b) of the Act. This assignment of such forms of government also constitutes a change which is subject to the preclearance requirements of the Voting Rights Act of 1965.
>
> With regard to municipalities, the provisions of Articles 2 and 8 of the Act require the municipalities to either adopt a new form of government or forfeit their articles of incorporation. Both the adoption of a new form of government and the forfeiture of the articles of incorporation are changes within the meaning of Section 5 which must be submitted for federal review prior to their implementation.
>
> Lastly, the failure of the Attorney General to interpose an objection to this Act at this time does not bar any subsequent judicial action to enjoin enforcement of such changes.

The parties apparently did not submit a copy of the August 28, 1975, letter for the district court record in the present case. However, the court may take judicial notice of the text of the letter, since it is reprinted in *Woods* v. *Hamilton*.

and to note that such adoption must be submitted for Section 5 review. The letter then stated (473 F. Supp. at 645):

> [i]n addition, those counties which do not conduct an election to change the form of government will be assigned a form of government according to the provisions of Section 14-3701(b) of the Act. This assignment of such forms of government also constitutes a change which is subject to the preclearance requirements of the Voting Rights Act of 1965.

The district court ruled in *Woods* that the entire Home Rule Act had been submitted to the Attorney General for preclearance in 1975 and that when he expressly precleared one feature of it and expressly reserved the right to object to others, the failure to mention specifically the transfer of powers constituted preclearance of that feature as well (473 F. Supp. at 644-647). We believe the court erred in its construction of the August 28, 1975, letter. It is clear from a reading of the letter that the only feature of the Act that the Attorney General was preclearing was the holding of referenda. Thus, it should not be assumed that silence concerning the transfer of powers feature indicates unspoken approval. Nor does the specific reservation of the right to object to new forms of government or assignment of designated forms of government suggest approval of the transfer of powers; rather, because the transfer of powers would occur at the time the form of government was chosen or assigned, it is reasonable to conclude that the Attorney General was also reserving the right to object to the transfer. This conclusion is reinforced by the fact that the features of the Act other than the holding of referenda were not ripe for Section 5 review at the time of submission of the Act in 1975. See 28 C.F.R. 51.20. At that point it was not possible to tell what form of government ultimately would be in place in any particular county; nor was it possible to determine what powers would be assumed pursuant to the Act until each local government decided

whether to change its form of government and what form to adopt.

The effect of the transfer of powers could differ depending on the form of government adopted or assigned and could be considered properly only in conjunction with that adoption or assignment. The Home Rule Act (S.C. Code Ann. § 4-9-30 (Law. Co-op. 1977 & Cum. Supp. 1982)) set forth increased powers for each alternate form of government, except for the board of commissioners form, which was granted more limited powers (*id.* § 4-9-1030).[21] Thus, had Edgefield County opted for the board of commissioners form of government, it would have enjoyed fewer powers than it had pursuant to the 1966 Act; under any other form it would have enjoyed somewhat greater powers.[22] Furthermore, the extent of authority exercised by council members would vary depending on the form of government chosen. Under the council-supervisor form the supervisor is an elected council member who exercises various administrative powers (S.C. Code Ann. § 4-9-410 (Law. Co-op. 1977)), whereas under the council-administrator form (*id.* § 4-9-620) and the council-manager form (*id.* § 4-9-820) such powers are exercised by an employee of the council. Thus, the Attorney General could have reviewed the transfer of powers

---

[21] S.C. Code Ann. § 4-9-30 (Law. Co-op. 1977 & Cum. Supp. 1982) states in part:

> Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: * * *

The district court in *Woods*, in quoting this provision, deleted the language excepting the board of commissioners form of government. See 473 F. Supp. at 646 n.8.

[22] See J.A. App. 30a for a description of how the powers Edgefield County had under the 1966 Act were enhanced under home rule.

only in the abstract in 1975, and any preclearance would have been premature.

Since the August 28, 1975, letter did not preclear the adoption or assignment of a form of government, and since the transfer of powers properly could be considered only in connection with that adoption or assignment, the letter did not preclear the transfer of powers.[23] Rather, the transfer of powers was properly considered along with the 1976 Edgefield County resolution and ordinance adopting the council-administrator form of government, to which the Attorney General interposed an enforceable objection. The district court erred in declining to enforce that objection.[24]

---

[23] The conclusion that the Attorney General did not preclear the transfer of powers provision of the Home Rule Act in 1975 is consistent with the practice set forth in the current Section 5 guidelines, which provide that the Attorney General's failure to object to enabling legislation "does not exempt the political subunit itself from the requirement to obtain preclearance when it seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation." 28 C.F.R. 51.14(a).

[24] Even if the Court were to reject our contentions on the first question, that would not bar reversal based on the second question. The implementation of the transfer of powers in 1976 meant that the at-large election feature would exist in a different context than in prior years. The entire system established in 1976, including the "preexisting" elements such as at-large elections, was a covered change and was subject to preclearance under Section 5. See *City of Lockhart* v. *United States*, No. 81-802 (Feb. 23, 1983), slip op. 5-6. Thus, assuming the Court were to find that the Attorney General precleared the use of at-large elections when he reviewed the 1971 Act, the Attorney General still was not precluded from entering an enforceable objection to that feature in connection with the 1976 resolution and ordinance.

The substantive merits of the Attorney General's objection are not at issue in this case. We note, however, that the objection is not precluded under the holding of *City of Lockhart*, *supra*, slip op. 7-10, because, *inter alia*, the objection rested on a conclusion with respect to discriminatory purpose as well as discriminatory effect (see J.S. App. 37a).

CONCLUSION

The judgment of the district court should be reversed and the case remanded to afford Edgefield County an opportunity to seek preclearance of the change to at-large elections.

Respectfully submitted.

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

CAROLYN F. CORWIN
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
JAMES W. CLUTE
Attorneys

AUGUST 1983

☆ U. S. GOVERNMENT PRINTING OFFICE: 1983 412519 88

No. 82-282-ATX
Status: GRANTED

Title: Thomas C. McCain and William Spencer, etc.,
Appellants
v.
Charles E. Lybrand, et al.

Docketed:
August 6, 1982

Court: United States District Court
for the District of South Carolina

Counsel for appellant: McDonald,Laughlin

Counsel for appellee: Henderson,Karen LeCraft

Entry	Date	Note	Proceedings and Orders
1	Aug 6 1982	G	Statement as to jurisdiction filed.
3	Sep 2 1982		Order extending time to file response to jurisdictional statement until September 10, 1982.
4	Sep 13 1982		Motion of appellees Charles E. Lybrand, et al. to dismiss or affirm filed.
5	Sep 15 1982		DISTRIBUTED. October 8, 1982
6	Oct 12 1982	P	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
7	Feb 28 1983		Brief amicus curiae of United States filed.
8	Mar 2 1983		DISTRIBUTED. March 18, 1983
10	Mar 21 1983		REDISTRIBUTED. March 25, 1983
12	Mar 28 1983		REDISTRIBUTED. April 1, 1983
13	Mar 30 1983		Record requested.
14	Apr 6 1983		Record filed.
15	Apr 6 1983		Certified original record, box, received.
16	Apr 13 1983		DISTRIBUTED. April 29, 1983
18	May 9 1983		REDISTRIBUTED. May 12, 1983
20	May 16 1983		REDISTRIBUTED. May 19, 1983
23	May 23 1983		REDISTRIBUTED. May 26, 1983
25	May 31 1983		REDISTRIBUTED. June 2, 1983
27	Jun 6 1983		REDISTRIBUTED. June 9, 1983
29	Jun 13 1983		REDISTRIBUTED. June 16, 1983
30	Jun 20 1983		PROBABLE JURISDICTION NOTED.
			**********
31	Aug 5 1983		Brief amicus curiae of United States filed.
32	Aug 6 1983		Brief of appellants Thomas C. McCain, et al. filed.
33	Aug 6 1983		Joint appendix filed.
34	Aug 18 1983	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
35	Sep 8 1983		Brief of appellees Charles E. Lybrand, et al. filed.
36	Sep 21 1983		SET FOR ARGUMENT. Monday, October 31, 1983. (4th case)
37	Sep 21 1983		CIRCULATED.
38	Oct 3 1983		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
39	Oct 31 1983		ARGUED.